

COMMUNITY MENTOR AGREEMENT FOR GRADUATE NURSING STUDENTS

This Agreement is entered between The Regents of the University of California, a California Constitutional Corporation, on behalf of its University of California Davis Health System (University), and County of El Dorado Health Services Department (Affiliate).

WHEREAS, University operates a program for the education of Graduate Students in nursing (“Trainees”), which requires a field experience component; and

WHEREAS, Affiliate operates a facility located at 931 Spring Street, Placerville, CA, which Affiliate is willing to make available to Trainees for such field experience subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, the parties agree as follows:

A. Responsibilities of University. The University shall administer all educational components of its program and shall coordinate all aspects of each Trainee’s field experience rotation with Affiliate.

Specifically, University shall perform as follows:

1. University shall designate a liaison (“University Liaison”) who shall be responsible for planning, development, coordination, and implementation of each Trainee’s field rotation in Affiliate’s facility. The name and contact information for the current University Liaison is contained in Exhibit A to this Agreement, which is attached hereto and incorporated herein.
2. University Liaison shall notify the Affiliate in advance of each planned field rotation and provide all relevant information, including each Trainee’s name, date of arrival, and tentative schedule of rotation. This schedule shall be subject to the Affiliate’s approval, which approval shall not be unreasonably withheld.
3. University shall maintain records of each Trainee’s field rotation with Affiliate.
4. Trainees are not employees and shall be considered members of Affiliate’s “workforce” as that term is defined by the Health Insurance Portability and Accountability Act (“HIPAA”) regulations at 45 C.F.R. Section 160.103. University shall assure that each Trainee has received training regarding the confidentiality of Protected Health Information under the HIPAA. University shall use all reasonable efforts to assure each Trainee’s compliance with Affiliate’s policies, procedures, rules and regulations regarding the preservation of confidentiality with respect to all patient information, attached hereto as Exhibit C, and incorporated herein.
5. University shall assure that each Trainee assigned to Affiliate for rotation has received training in blood and body fluid universal precautions consistent with the U.S. Centers for Disease Control and Prevention Guidelines. Documentation of such training will be provided to Affiliate upon request.

6. University shall assure that each Trainee has obtained a physical examination and has received the immunizations and health clearances listed in Exhibit B to this Agreement, which is attached hereto and incorporated herein, and provide documentation of such upon Affiliate's request.
7. University shall maintain professional liability insurance or self-insurance coverage for each Trainee throughout the term of this Agreement and, unless said insurance provides coverage on an occurrence basis, for at least three (3) years following termination of this Agreement in the following minimum amounts: one million dollars (\$1,000,000) per occurrence; three million dollars (\$3,000,000) in the aggregate.

B. Responsibilities of Affiliate. Affiliate agrees to grant Trainees access to its facility located at 931 Spring Street, Placerville, CA, for the purposes of field training throughout the term of this Agreement.

Specifically, Affiliate shall perform as follows:

1. Affiliate shall designate an individual to serve as liaison ("Affiliate Liaison") with University Liaison and shall communicate the name and contact information of that individual to University Liaison upon execution of this Agreement. Affiliate Liaison shall have the authority to approve proposed Trainee rotation schedules.
2. Affiliate shall retain the right to approve the number of Trainees assigned to its facility at any given time and to approve acceptance of individual Trainees, provided that such discretion is exercised within the limits of applicable state and federal law. Affiliate shall have the right to demand that University withdraw from Affiliate's facility any Trainee, employee, or instructor whose conduct is reasonably deemed unacceptable at any time during the term of this Agreement. Such demand must be in writing and include a statement explaining why the individual must be withdrawn.
3. Affiliate shall designate one of its licensed clinician, to act as a community mentor ("Community Mentor") for each Trainee assigned for rotation in Affiliate's facility. Affiliate Liaison shall communicate to University Liaison the name of each Community Mentor designated for each Trainee prior to the commencement of any rotation.
4. If a physician, nurse or nurse practitioner is serving as a Community Mentor under this Agreement, Affiliate shall ensure that such physician, nurse or nurse practitioner is duly licensed to practice medicine in the state of California, trained and active in primary care and is in good standing with the licensing board and the community.
5. Affiliate Community Mentor shall:
 - a. Serve as Trainees' primary supervisors during field rotations and provide periodic evaluations of Trainees to University.
 - b. Assist University instructors in selecting appropriate activities for Trainee's educational field experience.
 - c. Meet with University instructors to communicate and exchange ideas.

- d. Orient University instructors and Trainees to the Affiliate’s facility, including, its philosophy, physical area, policies, procedures and channels of communication.
- e. Participate in the instructional phase of the field experience and if necessary, attend meetings with University faculty to coordinate the field experience program.
- f. Ensure that any Affiliate personnel working with Trainee will do so in accordance with provisions specified in this Agreement.

Affiliate shall maintain professional liability insurance or self-insurance coverage throughout the term of this Agreement and, unless said insurance provides coverage on an occurrence basis, for at least three (3) years following termination of this Agreement in the following minimum amounts: two million dollars (\$2,000,000) per occurrence; five million dollars (\$5,000,000) in the aggregate. However, if such insurance or program of self-insurance is written on a commercial claims made form following termination of this Agreement, coverage shall survive for a period no less than three years. Coverage shall also provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- 6. Affiliate shall not rely on Trainees to fulfill its client obligations nor decrease its normal complement of staff due to Trainee’s presence. Trainee rotations are intended primarily for educational purposes, and any benefit that accrues to Affiliate is incidental.

C. General Terms and Conditions.

- 1. Insurance. Each party, at its own cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force, and maintain insurance or a program of self-insurance with the following coverages and limits:

- a. Comprehensive or Commercial Form General Liability Insurance or an equivalent program of Self-Insurance with limits as follows:

(1)	Each Occurrence	\$1,000,000
(2)	Products, Completed Operations Aggregate	\$2,000,000*
(3)	Personal and Advertising Injury	\$1,000,000
(4)	General Aggregate	\$2,000,000*

* \$1,000,000 for comprehensive form

However, if such insurance or program of self-insurance is written on a commercial claims made form following termination of this Agreement, coverage shall survive for a period no less than three years. Coverage shall also provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- b. Workers' Compensation Insurance or an equivalent program of Self-Insurance as required under California State Law.

- c. Business Automobile Liability for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.

Upon request, each party shall provide to the other a Certificate of Insurance or Self-Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30)-day advance written notice of any modification, change, or cancellation of any of the above insurance coverages.

- 2. Discrimination. Both parties agree not to discriminate in the selection or acceptance of any Trainee pursuant to this Agreement because of race, color, national origin, religion, sex, sexual orientation, handicap, age, veterans status, medical condition (cancer-related) as defined in section 12926 of the California Government Code, ancestry, marital status or citizenship, within the limits imposed by law or University policy.
- 3. No Compensation. Neither party has any financial obligation to the other party under the terms of this Agreement.
- 4. Indemnification.
 - a. University shall defend, indemnify and hold Affiliate, its officers, employees, contracted physicians, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, employees or Trainees.
 - b. Affiliate shall defend, indemnify and hold University, its officers, employees, agents, and Trainees harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Affiliate, its officers, agents, employees, or contracted physicians.
- 5. Agreement Term. The term of this agreement shall commence August 1, 2011 and shall continue through July 31, 2012, or until earlier terminated pursuant to Section No. 6 below. The term may be extended by fully executed written amendment.
- 6. Termination. Either party may terminate this Agreement without cause at any time by giving sixty (60) days advance written notice of termination to the other party except that any Trainee rotations in progress at the time of notice of termination must be completed before termination takes effect.
- 7. Legal Notices. Any legal notices required or authorized by this Agreement shall be in writing and sent by certified mail, return receipt requested, or by U.S. mail, postage prepaid, addressed as follows:

To University	To Affiliate
Health System Contracts University of California Davis Health System 2315 Stockton Boulevard Sherman Building, Suite 2300 Sacramento, CA 95817	County of El Dorado Health Services Department Public Health Division 931 Spring Street Placerville, CA 95667

8. Amendments. No change or addition may be made to this Agreement except by fully executed written amendment.
9. Assignment. No party to this Agreement may assign the Agreement, assign rights under the Agreement, or delegate duties under the Agreement without the prior written consent of the other party hereto. Except as specifically provided in this Agreement, any attempted assignment or delegation of a party's rights, claims, privileges, duties or obligations hereunder shall be null and void.
10. Trainee Status. For the purposes of this Agreement, Trainees shall be considered neither students nor employees of Affiliate.
11. HIPAA Privacy Regulations. The parties agree that University is not a "business associate" of Affiliate under HIPAA. University will not be performing or assisting in the performance of covered HIPAA functions on behalf of Affiliate. There will be no exchange of individually identifiable health information between Affiliate and University. Students in the program are trainees who are part of Affiliate's "workforce" as defined in HIPAA regulations at 45 C.F.R. Section 160.103. With that understanding, the parties agree that they shall comply with all HIPAA privacy regulations, to the extent they apply at all, including but not limited to those set forth in 45 C.F.R. Parts 160 and 164, and also with any privacy applications arising under the State of California."
12. ADMINISTRATOR-The County Officer or employee with responsibility for administering this Agreement is Olivia C. Kasirye, M.D., M.S., Public Health Officer, or successor.
13. Entire Agreement. This Agreement together with its exhibits contains all the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement:


THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	COUNTY OF EL DORADO
By:  Annie Wong, Director Health System Contracts	By: _____ Raymond J. Nutting Chair, Board of Supervisors
Date: <u>11-14-2011</u>	Date: _____

Exhibit A

University Liaison:

Mercedes Piedra-Sullivan
Outreach Coordinator
Betty Irene Moore School of Nursing Dean's Office
UC Davis Health System
4610 X Street Suite 4202, Sacramento, CA 95817
Office (916)734-7136| Fax (916)734-3257

EXHIBIT B
UCDHS HEALTH CLEARANCE CRITERIA

Mandatory MEASLES (RUBEOLA) Criteria:

- Proof of immunity to measles. Acceptable criteria:
- Positive serology for Antibody to Measles is required (**copy of lab slip**).
- OR**
- Documentation of **TWO** measles shots in lifetime.

Mandatory RUBELLA (GERMAN MEASLES) Criteria:

- Proof of immunity to Rubella. Acceptable criteria:
- Positive serology for Antibody to Rubella is required (**copy of lab slip**).
- OR**
- Documentation of **TWO** immunizations for Rubella (**MMR, MR, Rubella immunization**).

Mandatory TUBERCULOSIS (TB) Criteria:

- Evidence of PPD skin test results within the last 6 months. 2 Step required.
Or Quantiferon lab result within 1 year.

- If participant is already PPD Positive:
Evidence of a chest x-ray within the last 6 months and interview the participant for TB symptoms (symptom interview).

TB clearance is required annually for all health care providers by either a skin test or a symptom interview.

Mandatory SEASONAL FLU VACCINE – *is offered yearly.*

- Evidence of vaccination from elsewhere or vaccinated here at EHS/UCDMC.
- OR**
- Or sign a declination*

Mandatory immunity or declination VARICELLA (CHICKEN POX) Criteria:

- Proof of immunity to Varicella. Acceptable criteria:
- Varicella (VZ) by serology, not history (**copy of lab slip**).
- OR**
- Or two Varivax injections – will be given quarantine policy if non-immune.

Mandatory immunity or declination MUMPS

- Proof of immunity to Mumps. Acceptable criteria:
- Documentation of TWO MMR's in a lifetime.
- OR**
- Positive serology antibody for mumps (**copy of lab slip**).
 - Or sign a declination.

Mandatory immunity or declination Hepatitis B only for employees at risk of Bloodborne exposure – (exception – volunteers are not eligible, only if in CLA class)

- EHS requires all three (3) doses of Hepatitis B Vaccine.
- EHS requires a Hepatitis B Surface antibody test (CDC states a quantitative number value of '10' represents life time immunity – lab values that are positive – may or may not reflect this.

RECOMMENDED TETANUS, DIPHTHERIA AND PERTUSSIS VACCINE (TDAP) (*once in a lifetime booster for Whooping cough*).

- OR**
- Or a sign declination – **Mandatory**

 - Antibody only for employees at risk of Bloodborne exposure Hepatitis C.
Tested by serology (This does not preclude the employees or volunteers ability to work if positive – stays confidential)

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 1 of 9
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") of 1996 was established to create a national standard for the privacy of individually identifiable health information. The rule is promulgated under 45 CFR Parts 160-164 and applies to health plans, health care clearinghouses, and health care providers who transmit electronic transactions.

The rule requires covered entities to implement privacy policies and procedures to protect and safeguard individually identifiable health information from inappropriate access, use, or disclosure. El Dorado County is defined as a covered entity under 45 CFR, and therefore, is required to maintain documentation of its Privacy Policies and Procedures to comply with these regulations.

While HIPAA created a national standard or floor of protection for the privacy of protected health information ("PHI"), Congress recognized many states had strong confidentiality laws in place. Thus, with respect to these established regulations, the standards and requirements of HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

This policy applies to all workforce members who may have access to protected health information as a result of services provided by El Dorado County. It outlines the guidelines and expectations for the necessary collection, use, and disclosure of protected health information while maintaining reasonable safeguards to protect the privacy of an individual's confidential information.

The privacy policies are divided into the following policy sections:

1. General
2. Client Rights
3. Use and Disclosure of Protected Health Information

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 2 of 9
	Date Adopted: 1/23/07	Revised Date:

4. Minimum Necessary
5. Administrative, Technical, and Physical Safeguards
6. Research Use and Disclosure
7. De-identified Protected Health Information, Limited Data Sets, and Data Use Agreements
8. Business Associates
9. Sanctions, Penalties, and Whistleblowers
10. Group Health Plans

Definition:

For the purposes of these policies, the terms "confidential information" or "protected health information" are the same. These terms mean individually identifiable health information that is a subset of health information, including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or healthcare clearinghouse, and relates to the:
 - i. Past, present, or future physical or mental health condition of an individual,
 - ii. Provision of health care to an individual, or the
 - iii. Past, present, or future payment for the provision of health care to an individual.
- b. Either:
 - i. Identifies the individual, or
 - ii. Creates a reasonable basis to believe the information can be used to identify an individual.
- c. Is transmitted or maintained in any form or media

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 3 of 9
	Date Adopted: 1/23/07	Revised Date:

PHI Does Not Include:

- Health information maintained in employment records needed to fulfill El Dorado County's role and obligation as an employer
- Education records under the Family Educational Rights and Privacy Act

1. Safeguard Individual Confidential Information

- a. As a covered entity, El Dorado County may collect, create, maintain, transmit, use, and/or disclose confidential information regarding individuals to the extent needed to administer its programs, services, and activities.
- b. El Dorado County will safeguard all confidential information regarding individuals, inform individuals of the County's privacy practices, and respect individual privacy rights in accordance with El Dorado County's privacy policies and procedures.
- c. This policy identifies four (4) types of individuals for whom the County is most likely to obtain, collect, or maintain confidential information:
 - i. El Dorado County's clients;
 - ii. Providers who provide services to El Dorado County's clients;
 - iii. El Dorado County inmates;
 - iv. El Dorado County's employees enrolled in health benefit plans.
- d. El Dorado County shall provide HIPAA training to all workforce members who may have access to protected health information as necessary and appropriate to carry out their functions within the covered entity. El Dorado County shall require every employee with access to protected health

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 4 of 9
	Date Adopted: 1/23/07	Revised Date:

information ("PHI") to sign a "Privacy & Security Acknowledgement" that outlines the employee's responsibility to protect the privacy of confidential information.

2. Safeguard Client's Confidential Information

A "Client" is an individual who requests or receives services from El Dorado County.

- a. El Dorado County, its employees, and business associates will respect and protect the privacy of records and confidential information about clients who request or receive services from El Dorado County. This includes, but is not limited to:
 - i. Applicants or recipients of public assistance;
 - ii. Minors and adults receiving alcohol and drug, mental health, primary health, and public health services from El Dorado County;
 - iii. Persons who apply for or are admitted to a county operated or county funded mental health center.
- b. All confidential information regarding El Dorado County's clients must be safeguarded in accordance with the County's privacy policies and procedures.
- c. El Dorado County shall not use or disclose confidential information unless:
 - i. The client has signed a written release of information authorizing the use or disclosure of information; or
 - ii. The use or disclosure is permitted or required by law.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 5 of 9
	Date Adopted: 1/23/07	Revised Date:

3. Safeguard Health Plan Enrollee's Confidential Information

- a. A health plan enrollee ("Enrollee") is a person enrolled in one or more of the group health plans sponsored by El Dorado County which results in the possession of or access to PHI.
- b. When El Dorado County obtains confidential information about Enrollees, El Dorado County may use and disclose such confidential information consistent with federal and state laws or regulations.

4. Conflict with Other Privacy Laws

- a. El Dorado County has adopted reasonable policies and procedures for the administration of its programs, services, and activities. If any state or federal law or regulation or order of a court having appropriate jurisdiction, imposes a more stringent requirement upon El Dorado County regarding the privacy of confidential information, El Dorado County shall act in accordance with the stricter standard.
- b. In the event more than one policy applies, and compliance with all such policies cannot be reasonably achieved, El Dorado County employees will seek guidance from an immediate supervisor. El Dorado County staff should consult with the Privacy Officer in appropriate circumstances.

5. El Dorado County's Notice of Privacy Practices

- a. El Dorado County will make available a copy of "El Dorado County Notice of Privacy Practices," to any client applying for or receiving covered services from El Dorado County or enrolled in a County health plan.
- b. El Dorado County's Notice of Privacy Practices shall contain the required information mandated by federal regulations regarding the notice of privacy practices.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 6 of 9
	Date Adopted: 1/23/07	Revised Date:

- c. When El Dorado County is a direct treatment provider, the County will seek to obtain a signed, "Acknowledgment of Receipt of Notice of Privacy Practices" from each client.

6. Client Rights

El Dorado County's policies and procedures, as well as other federal and state laws and regulations, provide individuals with the right to access their own confidential information with some exceptions. This policy describes specific actions a client can take to request restrictions or amendments to their confidential information and the method for filing complaints. These specific actions are outlined in El Dorado County's "Client Rights Policy."

7. Use and Disclosure of Protected Health Information

El Dorado County shall not use or disclose confidential information about a client without a signed release of authorization from the individual, or the individual's personal representative, unless authorized by this policy or as otherwise permitted or required by state or federal law as outlined in El Dorado County's "Use or Disclosure of Protected Health Information Policy."

8. Minimum Necessary

El Dorado County will use or disclose only the minimum necessary amount of information to provide services and benefits to clients and only to the extent provided in El Dorado County's policies and procedures.

- a. The minimum necessary policy does not apply to:
 - i. Disclosures to or requests by a health care provider for treatment;
 - ii. Uses or disclosures made to the individual;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 7 of 9
	Date Adopted: 1/23/07	Revised Date:

- iii. Uses or disclosures authorized by the individual;
 - iv. Disclosures made to the Secretary of the United States Department of Health and Human Services in accordance with federal HIPAA regulations 45 CFR 160, Subpart C;
 - v. Use or disclosures required by law;
 - vi. Use or disclosures required for compliance with HIPAA regulations 45 CFR, Parts 160 - 164.
- b. When using or disclosing an individual's information, or when requesting an individual's information from a provider or health plan, El Dorado County employees must make reasonable efforts to limit the amount of information to the minimum necessary to accomplish the intended purpose of the use or disclosure as outlined in El Dorado County's "Minimum Necessary Policy."

9. Administrative, Technical, and Physical Safeguards

Employees of El Dorado County must take reasonable steps to safeguard confidential information from any intentional or unintentional use or disclosure, as outlined in El Dorado County's "Administrative, Technical, and Physical Safeguards Policy."

10. Research Use and Disclosures

El Dorado County may use or disclose an individual's confidential information for research purposes as outlined in El Dorado County's "Research Use and Disclosure Policy." This policy specifies requirements for using or disclosing confidential information with and without an individual's authorization and identifies allowable uses and disclosure when the County is acting as a Public Health Authority.

11. De-Identification Information and the Use of Limited Data Sets

Employees of El Dorado County will follow standards under which confidential information can be used and disclosed if the information which identifies a person has been removed or restricted to

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 8 of 9
	Date Adopted: 1/23/07	Revised Date:

a limited data set. Unless otherwise restricted or prohibited by other federal or state law, El Dorado County can use and share confidential information as appropriate for the work of El Dorado County, without further restriction, if El Dorado County or another entity has taken steps to de-identify the confidential information as outlined in El Dorado County's "De-Identified Protected Health Information, Limited Data Sets, Data Use Agreements Policy."

12. Business Associates

El Dorado County may disclose protected health information to business associates with whom there is a written contract or memorandum of understanding ("MOU") as outlined in El Dorado County's "Business Associates Policy."

13. Sanctions, Penalties, and Whistleblowers

All employees, contract employees, volunteers, interns, and members of the El Dorado County workforce must guard against improper use or disclosure of confidential information as outlined in El Dorado County's "Sanctions, Penalties, and Whistleblowers Policy."

13. Group Health Plans

El Dorado County will follow the requirements for the use and disclosure of protected health information for plan sponsors and health plans as outlined in El Dorado County's "Group Health Plans Policy."

Primary Department: Privacy Compliance Office

References: 45 CFR § 160 – 164

Attachments: Exhibit 'A' HIPAA Glossary

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL	Policy Number L-1	Page Number: Page 9 of 9
	Date Adopted: 1/23/07	Revised Date:

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 1 of 6
	Date Adopted: 1/23/07	Revised Date:

HIPAA Glossary

Term	Definition
Access	Privacy access means the right of an individual to inspect or obtain a copy of their protected health information in a designated record set for as long as the information is maintained by the covered entity in the designated record set. Security access means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system or resource.
Accounting of Disclosures	A report made to an individual, upon request, listing what disclosures (for which HIPAA requires an accounting) have been made.
Amendments	An individual's request to make an amendment to a designated record set containing their protected health information.
Authentication	Means the corroboration that a person is the one claimed.
Authorization	A valid document that provides permission, limited to the purpose of the authorization, to use or disclose protected health information.
Business Associate	A person or organization that performs on behalf of a covered entity a function or activity involving the use or disclosure of PHI.
Covered Entities	Health plans, health care clearinghouses, and health care providers that conduct standard electronic transactions.
Covered Functions	The functions of a covered entity which makes the entity a health plan, health care provider, or a health care clearinghouse.
De-Identified Information	Health information that does not identify an individual or there is no reasonable basis to believe the information can be used to identify an individual. De-identified information is not PHI.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 2 of 6
	Date Adopted: 1/23/07	Revised Date:

HIPAA Glossary

Term	Definition
Designated Record Sets	A group of records maintained by or for a covered entity that is used in whole or in part by or for the covered entity to make decisions about individuals. For health care providers the information includes medical records and billing information about individuals. For health plans it includes enrollment, payment, claims adjudication, and case or medical management record systems.
Disclosure	The release, transfer, provision of, access to, or divulging in any manner, information outside the entity holding the information.
Health Care	Care, services, or supplies related to the health of an individual.
Health Care Clearinghouse	A public or private entity that processes health information received from an entity in a nonstandard format into standard data elements or a standard transaction.
Health Care Operations	Activities related to covered functions that include: quality assessment and improvement activities, staff evaluations, insurance related activities, administrative function including legal services, auditing functions, fraud investigations, business planning and development, business management, and general administrative activities.
Health Care Provider	A provider of medical or health services or any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
Health Information	Information recorded in any form or medium that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 3 of 6
	Date Adopted: 1/23/07	Revised Date:

HIPAA Glossary

Term	Definition
Health Plan	An individual or group plan that provides or pays the cost of medical care.
HIPAA	Health Insurance Portability and Accountability Act - The 1996 federal law that established national standards for the protection of health information.
Hybrid Entity	A single legal entity that is a covered entity whose business activities include both covered and non-covered functions and has designated health care components.
Incidental Disclosures	Uses or disclosures of protected health information that it is accidentally or not intentionally disclosed and the covered entity has minimum necessary safeguards in place.
Information System	An interconnected set of information technology resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
Integrity	Data or information has not been altered or destroyed in an unauthorized manner.
Malicious Software	Software designed to damage or disrupt a system (e.g., a virus or worm).
Marketing	To make a communication about a product or service that encourages the recipient of the communication to purchase or use the product or service. Unless the communication is made, to describe a health-related product or service provided by or included in a plan of benefits of the covered entity for treatment of the individual, for case management, or care coordination.
Minimum Necessary	Reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 4 of 6
	Date Adopted: 1/23/07	Revised Date:

HIPAA Glossary

Term	Definition
Notice of Privacy Practices (NPP)	An adequate notice of an individual's rights concerning the uses and disclosures of PHI that may be made by the covered entity, and the covered entity's legal duties with respect to PHI.
Organized Health Care Arrangement (OHCA)	A clinically integrated care setting in which individuals typically receive health care from more than one health care provider, or an organized system of health care in which more than one covered entity participates in a joint arrangement, or other group health plan arrangement [45 CFR 160.103].
Password	Information composed of a string of characters which allows confidential authentications.
Payment	Activities undertaken by a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and the provision of benefits under the health plan, or activities by a health care provider to obtain reimbursement for the provision of health care.
Portability	The portion of HIPAA that provides for continued health insurance in certain circumstances.
Preemption	Where a provision of HIPAA is contrary to a provision of state law or the provision of state law is more stringent than the HIPAA standard or an exception determination that has been granted by the Secretary of the U.S. Department of Health and Human Services.
Protected Health Information (PHI)	Individually identifiable health information that: is transmitted or maintained in any form or medium including demographic information collected from an individual; is created or received by a health care provider, health plan, employer, or health care clearinghouse; relates to the past, present, or future physical or mental health or condition of an individual; is related to the provision of health care to an individual including the past,

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 5 of 6
	Date Adopted: 1/23/07	Revised Date:

	present, or future payment for the provision of health care;
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HIPAA Glossary

Term	Definition
Protected Health Information (PHI) - continued	Identifies the individual or there is reasonable basis to believe the information can be used to identify the individual [45 CFR 1634.501].
Rebuttal	A written statement rebutting the individual's statement of disagreement.
Required by Law	A legal mandate that compels a covered entity to make a use or disclosure of PHI which is enforceable in a court of law.
Restricted Disclosures	An agreement by a covered entity to restrict disclosure of an individual's PHI as requested by the individual.
Safeguards	Appropriate administrative, technical, physical measures, and policies and procedures to protect the privacy of PHI.
Sanctions	Penalties, corrective action, adverse action, or criminal prosecution that may result from violating HIPAA privacy requirements.
Security Incident	The attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
Standard Transaction	The exchange of information between two parties to carry out financial and administrative activities related to health care.
Statement of Disagreement	An individual's written statement disagreeing with the denial of all or part of a requested amendment to an individual's designated record set.
Treatment	The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GENERAL - EXHIBIT 'A'	Policy Number L-2	Page Number: Page 6 of 6
	Date Adopted: 1/23/07	Revised Date:

	referral of a patient for health care from one health care provider to another.
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HIPAA Glossary

Term	Definition
Use	With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
User	A person or entity with authorized access.
Workforce	Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.
Workstation	An electronic computing device, for example, a laptop or desktop computer, or any other device that performs similar functions, which stores electronic medial in immediate environment.

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 1 of 23
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") was enacted in 1996 to create a national standard to protect and enhance the rights of individuals by providing access to their health information and to control and limit the use and disclosure of protected health information ("PHI"). As a covered entity, El Dorado County is required to maintain written documentation of individual rights with respect to PHI.

The purpose of this policy is to establish the privacy rights of individuals, how individuals may exercise those rights, and how an individual may file a complaint if the individual believes his/her privacy rights have been violated

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. General

- a. El Dorado County's clients have the right:
 - i. To access to their own protected health information, consistent with certain limitations;
 - ii. To receive an accounting of disclosure of protected health information with certain limitations as outlined in this policy. The accounting request can include disclosures made up to six (6) years prior to the date of the request, excluding dates prior to April 14, 2003;
 - iii. To submit complaints if they believe or suspect information has been improperly used or disclosed, or if they have concerns regarding the privacy policies of El Dorado County.
- b. Clients may ask El Dorado County to take specific actions regarding the use and disclosure of their confidential information, and El Dorado County may either approve or deny the request. Clients have the right to request:

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 2 of 23
	Date Adopted: 1/23/07	Revised Date:

- i. The use and disclosure of the individual's PHI be restricted while carrying out treatment, payment activities, or health care operations;
 - ii. Information be sent to an alternative address and means, such as by mail, email, fax, or telephone;
 - iii. Amendments to the individual's PHI.
- c. Notice of Privacy Practices
- i. El Dorado County will use the "Notice of Privacy Practices" to inform clients how the County may use/disclose their confidential information. The Notice of Privacy Practices describes the actions a client may take or request with regard to the use/disclosure of their confidential information.
 - ii. El Dorado County reserves the right to make changes to its policies or to the Notice of Privacy Practices at any time to comply with state or federal law.
 - iii. El Dorado County will promptly revise and distribute its Notice of Privacy Practices whenever changes are made to the uses or disclosures, individual rights, legal duties, or other privacy practices stated in the notice.
 - iv. El Dorado County will retain copies of all Notice of Privacy Practices.
- d. Decision-making authority within El Dorado County
- i. The program's medical director or a licensed health care professional designated by the Program Administrator shall review a client's request to amend a health or medical record. The licensed health care professional may be a staff person involved in the client's case.
 - ii. A staff person designated by the Program Administrator shall review a client's request and any related documentation to amend any other confidential information that is not a health or medical record.
 - iii. El Dorado County may deny a client's access to their own confidential health information on the grounds that access may result in risk or harm to the client or to another person. However, prior to any decision to deny such access, the program's medical director or a licensed health

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 3 of 23
	Date Adopted: 1/23/07	Revised Date:

care professional, designated by the Program Administrator, shall review the request and any related documentation. The licensed health care professional may be an El Dorado County staff person involved in the client's case.

- iv. Decisions related to any other requests made to El Dorado County under this policy shall be in accordance with federal and state laws and regulations and/or El Dorado County's policies and procedures applicable to the program, service, or activity.

2. Restricted Use and Disclosure of Protected Health Information [45 CFR § 164.522(a)]

- a. Clients have the right to request restrictions on certain uses and/or disclosures of his/her confidential information.
- b. El Dorado County applies confidentiality laws applicable to specific programs or activities to protect the privacy of client confidential information. Even if those laws would permit El Dorado County to make a use or disclosure of confidential information, a client has the right to request a restriction on a use or disclosure of that confidential information.
- c. Clients will submit a written request to restrict a use or disclosure of confidential information.
- d. El Dorado County is not obligated to agree to a restriction and may deny the request or may agree to a restriction that is more limited than the client's request. County staff will notify the client whether the request was approved or denied.

Exception: Certain programs may only use confidential information that is authorized by the client, such as alcohol and drug programs or vocational rehabilitation participants. For those program recipients, El Dorado County will honor the request for restriction by making sure the authorization clearly identifies the authorized recipients of the confidential information.

- e. Emergency treatment should be provided even with an agreed upon restriction.

3. Receive Confidential Information [45 CFR § 164.522(b)]

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 4 of 23
	Date Adopted: 1/23/07	Revised Date:

- a. El Dorado County must accommodate reasonable requests by clients to receive communications by an alternative means such as by mail, e-mail, fax or telephone, and
 - i. When appropriate, the County may condition the provision of reasonable accommodations on how payment information, if any, will be handled, and on specification of an alternative address or other method of contact.
 - b. The County may not require an explanation for the request as a condition of providing communications on a confidential basis.
 - c. A health plan must permit individuals to request and must accommodate reasonable requests by an individual to receive communications of PHI from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.
4. Access to Protected Health Information [45 CFR § 164.524]
- a. Clients have the right to access, inspect, and obtain a copy of his/her confidential health information on file with El Dorado County.
 - b. Clients will submit a written request to access their records.
 - c. El Dorado County will release PHI to a guardian or personal representative, recognized under the law, as authorized to access an individual's confidential information and to act on behalf of the individual.
 - d. El Dorado County will verify the identity of all individuals requesting access to PHI.
 - i. If El Dorado County maintains confidential information about the client in a record that includes confidential information about other individuals, the client is only authorized to see the information pertaining to the client, **except** as provided below:
 - A. If a person identified in the file is a minor child of the client, and the client is authorized under California law to have access to the minor's confidential information or to act on

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 5 of 23
	Date Adopted: 1/23/07	Revised Date:

behalf of the minor for making decisions about the minor's care, the client may obtain confidential information about the minor except for the following:

- I. Abortion: A minor may consent for an abortion. No notification is allowed to the parent/guardian without consent of the minor;
- II. Birth Control [FC 6925]: A minor may consent for birth control (except sterilization). No notification is allowed to the parent/guardian without consent of the minor;
- III. Pregnancy [FC 6925]: A minor may consent for pregnancy prevention, diagnosis, and treatment (including inpatient care). No notification is allowed to the parent/guardian without consent of the minor;
- IV. Sexually Transmitted Diseases (STDs), Contagious and Reportable Diseases [FC 6926]: A minor who is 12 years or older may consent for contagious and reportable diseases diagnosis and treatment. No notification is allowed to the parent/guardian without consent of the minor;
- V. HIV Testing [FC 6926]: A minor who is 12 years or older and assessed as competent to give informed consent, may consent to receive a HIV test. No notification is allowed to the parent/guardian without consent of the minor;
- VI. Outpatient Mental Health Treatment [FC 6924(b)]: A minor who is 12 years or older may consent for Outpatient Mental Health Treatment provided in the opinion of the attending professional the minor is mature enough to consent and:
 1. The minor is the victim of incest or child abuse and,
 2. The minor would present a threat of serious physical or mental harm to self or others without treatment.
 3. Parent consent and notification should be made unless the provider believes it is inappropriate.
- VII. Alcohol/Drug Abuse Treatment [FC 6929(b)]: A minor who is 12 years or older may consent for Alcohol/Drug Abuse Treatment. Parent notification and consent is

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 6 of 23
	Date Adopted: 1/23/07	Revised Date:

required for methadone treatment. Minor consent for parent/guardian notification is required for all other Alcohol/Drug Abuse Treatment;

VIII. Rape [FC 6927]: A minor who is 12 years or older who is alleged to have been raped may consent for medical treatment. No notification is allowed to the parent/guardian without consent of the minor;

IX. Sexual Assault [FC 6928]: A minor may consent for medical treatment related to a sexual assault. Parent notification shall be made unless the provider believes the parent or guardian was responsible for the assault.

e. El Dorado County may deny a client's access request to PHI if prohibited by federal law. Some denials may be subject to review while others are not. Under federal law, clients have the right to access, inspect, and obtain a copy of his/her confidential health information with the following **exceptions**:

- i. Psychotherapy notes;
- ii. Protected health information compiled in reasonable anticipation of or for use in civil, criminal, or administrative actions proceedings;
- iii. Protected health information that is subject to the Clinical Laboratory Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);
- iv. Confidential information that, in good faith, El Dorado County believes can cause harm to the client or to any other person, or is reasonably likely to endanger the life or physical safety of the individual or other person;
- v. If prohibited by state or federal laws, and;
- vi. Documents protected by the attorney-client privilege and/or attorney work-product doctrine.

f. A licensed health care professional will review a client or personal representative's access request. Access may be denied if the licensed health care professional determines there is a substantial risk of significant adverse or detrimental consequences to the client or another person or as otherwise provided herein. In certain circumstances identified in 45 CFR 164.524, the client

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 7 of 23
	Date Adopted: 1/23/07	Revised Date:

may request a review of this decision by another licensed health care professional who was not part of the original determination.

g. El Dorado County will notify the client whether the access request was approved or denied.

5. Amendments to Protected Health Information [45 CFR § 164.526]

a. Clients have the right to request an amendment to his/her confidential health information maintained by the County.

b. Clients will submit a written request to amend PHI.

c. El Dorado County is not obligated to agree to an amendment and may deny the request or limit its agreement to amend. The client will be notified whether the request is accepted or denied within 60 days of receipt the request unless extended pursuant to 45 CFR 526(b)(2)(ii).

d. El Dorado County may deny the client's request for amendment if:

i. The information is found to be accurate and complete;

ii. The information was not created by El Dorado County, unless the client provides a reasonable basis to believe the originator of the health information is no longer available to act on the requested amendment;

iii. The information is not part of El Dorado County's designated record set, or;

iv. The information is not available for inspection or access by the client, pursuant to Section 4 of this policy.

6. Accounting of Disclosures [45 CFR § 164.528]

a. Clients have the right to receive an accounting of certain disclosures, as outlined in the procedure section of this policy, which El Dorado County has made for any period of time not to exceed six (6) years prior to the date of the request and excluding dates prior to April 14, 2003.

b. El Dorado County will temporarily suspend a client's right to receive an accounting of disclosure, as outlined in the procedure section of this policy, made to a health oversight agency or to a law

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 8 of 23
	Date Adopted: 1/23/07	Revised Date:

enforcement official, for the length of time specified by the agency or official, or for a period not to exceed thirty (30) days when the agency's or official's request was made verbally with no subsequent written request.

7. Complaints [45 CFR § 164.530(d)]

- a. Clients have the right to submit a complaint if they believe El Dorado County has improperly used or disclosed protected health information, or if they have concerns about the privacy policies of the County, or concerns about El Dorado County compliance with such policies.
- b. The County shall document all complaints received and their disposition, if any.

PROCEDURE:

1. Notice of Privacy Practices [45 CFR § 164.520]

The County will use "El Dorado County Notice of Privacy Practices" to inform clients how El Dorado County may use and/or disclose medical information, how clients may access their information, and the actions a client may take, or request El Dorado County to take with regard to the use and/or disclosure of their information.

a. Health Plan Requirements:

- i. Health plans sponsored by El Dorado County must provide "El Dorado County Notice of Privacy Practices":
 - A. No later than the compliance date for the health plan to individuals then covered by the plan;
 - B. Thereafter, at the time of enrollment to individuals enrolling in the plan;
 - C. Within 60 days of a material revision to the notice to individuals covered by the plan.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 9 of 23
	Date Adopted: 1/23/07	Revised Date:

- ii. No less frequently than once every three (3) years, the health plan must notify individuals covered by the plan the availability of the notice and how to obtain the notice.
 - iii. The health plan notice shall be provided to the named insured of a policy under which coverage is provided and one or more dependents.
 - iv. If the County maintains a web site that provides information regarding the County's services or benefits, it must prominently post the notice of privacy practices on the web site and make the notice available electronically.
- b. Health Care Provider Requirements: A health care provider that has a direct treatment relationship with an individual must provide El Dorado County Notice of Privacy Practices:
- i. No later than the date of the first service delivery, including service delivered electronically after the compliance date for the covered health care provider, or
 - ii. In an emergency treatment situation, as soon as reasonably practical after the emergency situation;
 - iii. Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice and if not obtained, document good faith efforts and the reason why the acknowledgement was not obtained.
 - iv. If the covered health care provider maintains a physical service delivery site, the notice of privacy practices will be available for individuals and will be posted in a clear and prominent location where it is reasonable to expect individuals to be able to read the notice.
 - v. El Dorado County will prominently post its notice on its website and make the notice available electronically.
- c. Electronic Notice of Privacy Practices Requirements:
- i. The individual must agree to electronic notice;
 - ii. In the event of email failure, a paper notice will be provided;
 - iii. Electronic notice will be provided automatically in response to an individual's first request for service if that request is made electronically;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 10 of 23
	Date Adopted: 1/23/07	Revised Date:

- iv. The individual who is the recipient of the electronic notice retains the right to obtain a paper copy of the notice upon request.
2. Restriction of Uses and Disclosures Request [45 CFR §164.522]
- a. Clients may request El Dorado County to restrict the use and/or disclosure of his/her confidential information to:
 - i. Carry out treatment, payment, or health care operations;
 - ii. A relative or other person involved in the client's care.
 - b. Clients will submit a request to restrict a use or disclosure in writing. El Dorado County will verify the client's identity and authority to make the request.
 - c. El Dorado County is not required to agree to a restriction requested by the client.
 - i. El Dorado County will not agree to restrict a use or disclosure of confidential information if the restriction would adversely affect the quality of the client's care or service;
 - ii. El Dorado County cannot agree to a restriction that would limit or prevent El Dorado County from making or obtaining payment for services;
 - iii. Emergency treatment should be provided even with an agreed upon restriction;
Exception: For alcohol and drug participants, federal regulations (42 CFR Part 2 and 34 CFR) prohibit El Dorado County from denying client requests for restrictions on uses and disclosures of their confidential information regarding treatment or rehabilitation.
 - d. El Dorado County will document the client's request and the reasons for granting or denying the request in the client's hard copy or electronic record file.
 - i. Prior to any use or disclosure of client information, staff must confirm such use or disclosure has not been granted a restriction by reviewing the case file.
 - e. If El Dorado County agrees to a client's restriction request, the County will not use or disclose information that violates the restriction.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 11 of 23
	Date Adopted: 1/23/07	Revised Date:

Exception: If the client needs emergency treatment and restricted confidential information is needed to provide emergency treatment, the County may use or disclose such confidential information to the extent needed. However, once the emergency situation subsides, El Dorado County must inform the provider that further use or disclose the information is restricted.

- f. El Dorado County may terminate the restriction agreement if:
 - i. The client agrees to or requests termination in writing;
 - ii. The client orally agrees to or requests termination of the restriction. El Dorado County will document the oral agreement or request in the client's file;
 - iii. El Dorado County informs the client that it is terminating the restriction agreement. Such termination is only effective with respect to PHI created or received after it has so informed the individual.

- 3. Confidential Communication Request [45 CFR § 164.522 (b)]
 - a. Clients may request El Dorado County as a health care provider to accommodate all reasonable written requests to receive communications by an alternative means or at an alternative location;
 - b. El Dorado County, as a health plan sponsor, must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of PHI from the health plan by alternative means or location if, the individual clearly states in writing the disclosure could endanger the individual;
 - c. Clients must specify in writing the preferred means or location;
 - d. El Dorado County may terminate the agreement to an alternative location or method of communication if the:
 - i. Client agrees to or requests termination of the alternative location or method of communication in writing;
 - ii. Alternative means or method of communication is not effective and the County is unable to contact the client at the location or in the manner requested;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 12 of 23
	Date Adopted: 1/23/07	Revised Date:

- iii. Client fails to respond to payment requests if applicable.
4. Access to Protected Health Information Request [45 CFR § 164.524]
- a. Clients have the right to request access to their PHI subject to certain limitations as outlined in Section 4 of this policy.
 - i. Clients will submit a written request for access and El Dorado County will verify the identity and authority of the client.
 - ii. El Dorado County may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate a timely provision of access.
 - b. El Dorado County may deny a client's request to access without an opportunity to review the denial for the following:
 - i. Psychotherapy notes;
 - ii. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative proceeding, and;
 - iii. PHI maintained by a covered entity that is:
 - A. Subject to the Clinical Laboratory Improvements Amendments of 1988, [42 U.S.C. 263a] to the extent the provision of access to the individual would be prohibited by law, or;
 - B. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to [42 CFR 493.3(a) (2)].
 - iv. Access would reasonably reveal the source of the information from someone other than a health care provider which was obtained under a promise of confidentiality.
 - v. A covered entity that is a correctional institution or a covered health care provider acting under direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of PHI, if obtaining such a copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer,

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 13 of 23
	Date Adopted: 1/23/07	Revised Date:

- employee, or other person at the correctional institution or responsible for the transporting of the inmate;
- vi. An individual's access to PHI created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research;
 - vii. An individual's access to PHI that is contained in records that are subject to the Privacy Act, 5 U.S.C. 52a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.
- c. El Dorado County may deny a client access to their PHI provided the County gives the client an opportunity to review the denial in the following circumstances:
- i. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person, or
 - ii. The PHI makes reference to another person, and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
 - iii. The request for access is made by the client's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to the personal representative is reasonably likely to cause substantial harm to the individual or another person.
- d. If El Dorado County denies access under Section 4 of this procedure, the client has the right to have the decision reviewed by a licensed health care professional who is designated to act as a reviewing official and who did not participate in the original denial determination. The County must then:

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 14 of 23
	Date Adopted: 1/23/07	Revised Date:

- i. Provide or deny access in accordance with the determination of the reviewing official;
 - ii. Promptly notify the individual in writing the outcome of the determination.
- e. El Dorado County must act on a client's written request for access no later than 30 days after receipt of the request, except for records under CA Health & Safety Code §123110 where access must be permitted within five (5) working days or copies transmitted within 15 days after receipt of the written request.
- i. If the requested records are not maintained or accessible on-site, and do fall under CA Health & Safety Code § 123110 the County must act no later than 60 days from receipt of the request;
 - ii. If the County is unable to act within the 30 days or 60 days limit, El Dorado County may extend the time by an additional 30 days, provided:
 - A. A written statement is sent to the individual stating the reasons for the delay and the date by which the County will complete its action on the request, and
 - B. The County may have only one such extension of time for action on a request for access.
- f. If El Dorado County grants the client's request, in whole or in part, the County will notify client.
- i. El Dorado County must provide access as requested in a timely manner, which may include arranging a convenient time and place to inspect, obtain, or mail a copy of the PHI as requested.
 - ii. A County staff person will accompany the client to inspect the record (s).
 - iii. If El Dorado County maintains the same information in more than one (1) format (e.g., electronic, hard-copy) or at more than one (1) location, the County need only provide the requested PHI once.
 - iv. El Dorado County must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the County will provide the information in a readable hard-copy format or another format as agreed to by the client and El Dorado County.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 15 of 23
	Date Adopted: 1/23/07	Revised Date:

- v. If El Dorado County does not maintain the requested PHI and knows where the information is maintained, the County will inform the client where to request access.
- vi. El Dorado County may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the PHI to which access has been provided, if:
 - A. The client agrees in advance, and
 - B. The client agrees in advance to any fees El Dorado County may impose to provide access.
- vii. Fees: El Dorado County may impose a reasonable cost-based fee provided the fee includes only the cost of:
 - A. Copying, including the cost of supplies and labor to copy the requested PHI;
 - B. Postage, when the client requested or agreed to have the information mailed;
 - C. Preparing an explanation or summary of the requested information if agreed to in advance by the client.
- g. If El Dorado County denies the request in whole or in part, the County must:
 - i. Give the client access to any other requested client information, after excluding PHI to which access was denied;
 - ii. Provide a timely written denial to the client and state:
 - A. The reason for the denial;
 - B. If applicable, a statement regarding the client's right to a review of the denial including how to exercise those rights;
 - C. Provide a description how the client may file a complaint with El Dorado County or to the Office of Civil Rights/Department of Health and Human Services.
 - iii. El Dorado County will document the client's request and the reasons for granting or denying the access in the client's hard copy or electronic record file.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 16 of 23
	Date Adopted: 1/23/07	Revised Date:

5. Amendment of Protected Health Information Request [45 CFR §164.526]
- a. Clients will submit in writing a request to amend his/her PHI. The County will verify the identity and the authority to make the amendment request.
 - b. All requests to amend a health or medical record shall be reviewed by the program's medical director or a licensed health care professional.
 - c. All requests to amend any other confidential information that is not a health or medical record shall be reviewed by the staff person designated by the Program Administrator.
 - d. El Dorado County must act on the client's request no later than 60 days of receiving the request. If the County is unable to act on the request within 60 days, the County may extend the time period up to an additional 30 days, provided:
 - i. The County notifies the client in writing the reasons for the delay and the date by which the County will complete its action;
 - ii. The County will use only one (1) 30-day extension.
 - e. If El Dorado County grants the request, in whole or in part, the County must:
 - i. Make the appropriate amendments to the PHI and document the amendment in the client's file or record;
 - ii. Identify the records that are affected by the amendment and appending or otherwise providing a link to the location of the amendment;
 - iii. Provide the client notice the request was granted.
 - iv. Obtain the client's identification and agreement to notify the relevant person or entities with which the amendment needs to be shared;
 - v. Make reasonable efforts to inform and provide the amendment within a reasonable time to:
 - A. Persons named by the client as having received the PHI and needing the amendment, and

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 17 of 23
	Date Adopted: 1/23/07	Revised Date:

- B. Persons, including business associates of the County which may have or could have relied on such information to the client's detriment.
- vi. El Dorado County may deny the client's request for amendment if:
 - A. The PHI is accurate and complete;
 - B. The PHI was not created by the County, unless the client provides a reasonable basis to believe that the originator of PHI is no longer available to act on the request;
 - C. The PHI is not part of the designated record set;
 - D. The PHI would not be available for inspection or access pursuant to Section 4 of this policy.
- f. If El Dorado County denies the requested amendment, in whole or in part, El Dorado County must:
 - i. Provide the client with a timely written denial which is sent or provided within the time limits specified in the Procedure Section (5) (d);
 - ii. In plain language, state the basis for the denial;
 - iii. Explain the client's right to submit a written statement disagreeing with the denial in whole or in part, the basis of such disagreement, and how the client may file such a statement. The County may reasonably limit the length of a statement of disagreement.
 - A. The County will enter the written disagreement statement into the client's case file;
 - B. The County may also enter a written rebuttal to the client's statement of disagreement into the client's case record. The County will send or provide a copy of any such written rebuttal to the client;
 - C. The County will include a copy of the client's disagreement statement and the written rebuttal by the County, if any, with any future disclosures of the relevant information;
 - D. If the individual has not submitted a written statement of disagreement, the County must include the client's request for an amendment and its denial, or an accurate summary of such information, with any subsequent disclosures of PHI;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 18 of 23
	Date Adopted: 1/23/07	Revised Date:

- E. Explain if the client does not submit a written statement of disagreement, the client may ask the County to include a copy of the client's original request for amendment and a copy of the written denial if the County makes any future disclosures of relevant information;
 - F. Provide information how the client may file a complaint with El Dorado County, or with the U.S Department of Health and Human Services, Office for Civil Rights, subject to Section (7) of this procedure, below.
 - iv. El Dorado County will document the client's request, whether the County granted or denied the request, the client's statement of disagreement, and the rebuttal statement in the client's hard copy or electronic case record file.
6. Accounting of Disclosures [45 CFR §164.528]
- a. Clients are permitted to request an accounting of certain disclosures of his/her PHI made by a covered entity.
 - b. The client's request for an accounting of disclosures will be made in writing to a specific department.
 - c. The client is required to present or provide a copy of valid picture identification to verify they have the authority to make the request.
 - d. The client will specify the time period of the request, not to exceed six (6) years and excluding dates prior to April 14, 2003.
 - e. Disclosures of PHI that are required to be listed in the accounting (assuming that the disclosure is permitted by other confidentiality laws applicable to the individual's information and the purpose for which it was collected or maintained) include:
 - i. Victims of abuse (other than child abuse), neglect, or domestic violence reports unless the County in exercising professional judgment believes informing the individual may cause serious harm or if the County believes the individual is responsible for the abuse, neglect, or injury;
 - ii. Public Health activities such as reporting of disease, injury, or investigation;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 19 of 23
	Date Adopted: 1/23/07	Revised Date:

- iii. Required by law;
 - iv. Health oversight activities;
 - v. Research purposes conducted without an authorization, using a waiver of authorization approved by an Institutional Review Board (IRB) or Privacy Board;
 - vi. Law enforcement purposes or pursuant to a court order;
 - vii. Decedents, coroners, medical examiners, funeral directors;
 - viii. Judicial and administrative proceedings;
 - ix. Any government entity, unless otherwise exempted;
 - x. Claims investigation;
 - xi. Disclosures to avert a serious threat to health and safety.
- f. Disclosures that are **not** required to be tracked and accounted for include:
- i. To carry out treatment, payment, and health care operations;
 - ii. To individuals of PHI about themselves;
 - iii. Pursuant to an authorization;
 - iv. Made to persons involved in the client's health care;
 - v. For national security or intelligence purposes;
 - vi. To correctional institutions or law enforcement agencies that have lawful custody of an inmate;
 - vii. As part of a limited data set;
 - viii. Disclosures for a facility's directory, to persons involved in the individual's care or for disaster relief purposes where the individual has had an opportunity to agree or object to the disclosure;
 - ix. To correctional institutions or law enforcement officials as provided in 45 CFR § 164.512(k)(5) for the provision of health and safety of individuals, inmates, or the officers and employees at the correctional institution or responsible for transporting inmates.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 20 of 23
	Date Adopted: 1/23/07	Revised Date:

- x. Disclosures prior to the compliance date of April 14,2003;
- xi. Incident to a use or disclosure otherwise permitted or required.
- g. The accounting must include for each disclosure:
 - i. The date of the disclosure;
 - ii. The name, and address if known, of the person or entity who received the disclosure;
 - iii. A brief description of the PHI disclosed;
 - iv. A brief statement of the purpose of the disclosure that reasonable informs the individual the basis for the disclosure, or in lieu of such a statement, a copy of a written request for a disclosure.
- h. If during the period covered by the accounting, the County has made multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may provide:
 - i. All the information listed in Section 6(e) above, and
 - ii. The frequency, periodicity, or number of disclosures; and
 - iii. The date of the last such disclosure during the accounting period.
- i. The County must act on the client's request for an accounting no later than 60 days after receipt of the request, subject to the following:
 - i. If the County is unable to provide the accounting within 60 days, the County may extend the time to provide the accounting by no more than 30 days, provided that:
 - A. Within 60 days after receipt of the request, the County provides the client with a written statement of the reasons for the delay and the date by which the accounting will be provided, and
 - B. The County may have only one (1) such extension.
- j. Fees: El Dorado County must provide the first requested accounting in any 12-month period without charge. The County may charge the client a reasonable cost-based fee for each subsequent request for an accounting within the 12 month period, provided that the County:

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 21 of 23
	Date Adopted: 1/23/07	Revised Date:

- i. Informs the client in advance of the fee, and
- ii. The client is given an opportunity to withdraw the request, or modifies the request to avoid or reduce the fee.
- k. El Dorado County will temporarily suspend a client's right to receive an accounting of disclosure of PHI that the County has made to a health oversight agency or law enforcement official for the length of time specified by such agency, if:
 - i. The agency or official provides a written statement to the County that such an accounting would reasonably be likely to impede the agency's activities;
 - ii. However, if such agency or official makes an oral request, the County will:
 - A. Document the statement including the identity of the agency or official making the statement;
 - B. Temporarily suspend the client's right to an accounting of disclosure subject to the statement; and
 - C. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless a written statement providing a time limit is submitted during the 30 days.
- l. If the accounting of disclosure cannot be provided, El Dorado County will provide a written statement to the client outlining the reason(s) the accounting can not be made:
 - i. The County has temporarily suspended the client's right to receive an accounting of disclosures;
 - ii. The request is prior to April 14, 2003;
 - iii. The individual making the request is not authorized to receive the Accounting of Disclosures, or
 - iv. The individual did not send or provide a copy of valid photo identification with the request.
- m. Accounting of disclosures documentation must be retained for a period of six (6) years from the date of its creation or the date when it was last in effect whichever is later. Documentation should

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 22 of 23
	Date Adopted: 1/23/07	Revised Date:

also include the titles of the person or office responsible for receiving and processing requests for an accounting by individuals.

7. Complaints [45 CFR § 164.530(d)]

- a. Clients, workforce members, or whistleblowers may file complaints concerning:
 - i. Disagreements with the County's privacy policies and procedures;
 - ii. Suspected violation in the use, disclosure, or disposal of the PHI;
 - iii. Denials of access to their PHI;
 - iv. Denial of amendments to their PHI.
- b. Complaints must be filed in writing, either on paper or electronically.
- c. Complaints may be filed with El Dorado County's Privacy/Compliance Officer or sent to the Secretary of the Department of Health and Human Services in accordance with El Dorado County Notice of Privacy Practices.
- d. The complaint must name the person that is the subject of the complaint and describe the acts or omissions believed to be in violation.
- e. El Dorado County will not intimidate, threaten, coerce, discriminate against or take other retaliatory action against any person filing a complaint or inquiring how to file a complaint.
- f. El Dorado County may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, and enrollment in a health plan, or eligibility for benefits.
- g. All complaints must be forwarded to the Privacy/Compliance Officer for documentation, investigation, disposition, and to mitigate any harmful effects due to inappropriate use or disclosure of PHI. Documentation will include any sanctions that were applied, if any, in accordance with El Dorado County's established personnel policies.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: CLIENT RIGHTS	Policy Number L-3	Page Number: Page 23 of 23
	Date Adopted: 1/23/07	Revised Date:

Primary Department: Privacy Compliance Office

References: 45 CFR § 160 - 164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 1 of 12
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The purpose of the Health Insurance Portability and Accountability Act ("HIPAA") is to protect and enhance the rights of consumers, to control the inappropriate use of health information, and to improve the quality, the efficiency, and the effectiveness of the health care system by promulgating standards and requirements mandated by law [45 CFR Parts 160-164]. HIPAA limits how covered entities may use or disclose protected health information ("PHI"). This policy is to establish guidelines for the use and/or disclosure of PHI as permitted or required by 45 CFR.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections

POLICY:

1. Written Authorization [45 CFR 164.508]

El Dorado County shall not use or disclose PHI without a written authorization signed by the individual, or by the individual's personal representative, unless it is permitted or required by law. When El Dorado County receives or obtains a valid authorization, the use or disclosure of PHI must be consistent with such authorization.

2. Required Disclosures [45 CFR 164.524 or 45CFR 164.528]

El Dorado County is required to disclose PHI in two circumstances:

- a. To the Secretary of U.S. Department of Health and Human Services to investigate a complaint or to determine compliance with HIPAA regulations.
- b. To an individual regarding their own information, when requested under certain rights to access, inspect, and copy their PHI and to obtain an accounting of disclosure.

3. Permitted Disclosures without an Authorization

- a. Treatment, payment, or health care operations [45 CFR 164.502 & 164.506]: Covered entities are permitted to use or disclose PHI for treatment, payment, or health care operations limited to the following:

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 2 of 12
	Date Adopted: 1/23/07	Revised Date:

- i. Covered entities may use or disclose PHI for its own treatment, payment, or health care operations;
- ii. Covered entities may disclose PHI for treatment activities of a health care provider;
- iii. Covered entities may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information;
- iv. Covered entities may disclose PHI to another covered entity for the health care operations if each entity has or had a relationship with the individual who is the subject of the requested PHI and the disclosure is:
 - A. For the purposes of conducting quality assessment and improvement activities;
 - B. For the purposes of reviewing the competence or qualifications of health care professionals;
 - C. For the purposes of health care fraud and abuse detection or compliance.
- b. Covered entities that participate in an organized health care arrangement ("OHCA") may disclose PHI about an individual to another covered entity that participates in the OHCA for any health care operations activities of the OHCA [45 CFR 164.506(c)(5)].
- c. Public health activities [45 CFR 164.512]: El Dorado County may use and/or disclose PHI without an individual's authorization to carry out its duties as a public health authority to lawfully receive, use, disclose, or exchange protected health information such as:
 - i. Collecting or receiving information for the purpose of preventing or controlling disease, injury, or disability. This includes reporting disease, injury, vital events such as birth or death, and conducting public health surveillance, investigations, and interventions;
 - ii. Disclosing information to a foreign government official at the direction of a public health authority;
 - iii. Receiving child abuse reports as a public health authority or other appropriate government authority authorized by law;
 - iv. Activities related to the quality, safety, or effectiveness of a federal Food and Drug Administration (FDA) regulated product or activity;
 - v. Notifying a person who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 3 of 12
	Date Adopted: 1/23/07	Revised Date:

- vi. Disclosing PHI as permitted by 45 CFR 164.512(b)(1)(v) to an employer regarding an individual who is a member of El Dorado County's workforce if:
 - A. The covered entity is a covered health care provider who is:
 - I. A member of the workforce of El Dorado County, or
 - II. Who provides health care to the individual at the request of the El Dorado County:
 - 1. To conduct an evaluation relating to medical surveillance of the workplace or,
 - 2. To evaluate whether the individual has a work-related illness or injury;
 - B. The PHI that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - C. The employer needs the findings to comply with its obligations to record such illness or injury or to carry out its responsibilities for workplace medical surveillance and;
 - D. The covered health care provider distributes a written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
 - I. By giving a copy of the notice to the individual at the time the health care is provided, or
 - II. If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- vii. Public health research.
- d. Required by law: [45 CFR 164.512(a)]: El Dorado County may use or disclose PHI without an individual's authorization if required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law.
- e. Victims of abuse, neglect, or domestic violence [45 CFR 164.512(c)]: A covered entity may disclose PHI about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a governmental authority, including El Dorado County's social service or protective services agencies authorized by law to receive reports of such abuse, neglect, or domestic violence:
 - i. To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirement of such law;
 - ii. If the individual agrees to the disclosure, or

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 4 of 12
	Date Adopted: 1/23/07	Revised Date:

- iii. To the extent the disclosure is expressly authorized by statute or regulation and:
 - A. The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims, or
 - B. If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- f. Individual Access: El Dorado County's clients may access their own confidential information with certain limitations (refer to "Client Rights" policy).
- g. Psychotherapy Notes [45 CFR 164.508 (a)(2)]: El Dorado County may use or disclose psychotherapy notes without an individual's authorization limited to:
 - i. Carry out treatment, payment, or health care operations, including use by the originator of the psychotherapy notes for treatment;
 - ii. Training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
 - iii. Defend itself in a legal action or other proceeding brought by the individual;
 - iv. With respect to health oversight activities of the originator of the psychotherapy notes;
 - v. When required by law.
- h. Minimum Necessary: El Dorado County may disclose confidential information for treatment, payment, or health care operations in compliance with "Minimum Necessary" policy.
- i. Health oversight activities [45 CFR 164.512(d)]: El Dorado County may disclose PHI without an authorization for health oversight activities authorized by law, including: audits, quality assessment, accrediting/licensing of health care professionals and plans, compiling and analyzing information in anticipation of a civil or criminal legal proceeding, case management and care coordination, business planning and development, resolution of internal grievances (i.e., reviewing allegation of improper conduct), resolution of disputes from patients, or other activities necessary for oversight of the health care system including:
 - i. Government benefit programs for which health information is relevant to beneficiary eligibility;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 5 of 12
	Date Adopted: 1/23/07	Revised Date:

- ii. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards;
- iii. Entities subject to civil rights laws for which health information is necessary for determining compliance.

Exceptions to health oversight activities: Health oversight activities does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to: the receipt of health care; a claim for public benefits related to health; qualification for or receipt of public benefits or services when a patient health is integral to the claim for public benefits or services.

- j. Judicial and administrative proceedings [45 CFR 164.512(e)]: El Dorado County may disclose PHI without an authorization for judicial and administrative proceedings in response to an order of a court, subpoena, discovery request, or other lawful process unless prohibited, or otherwise limited, by federal or state law applicable to program or activity requirements.
- k. Law enforcement purposes [45 CFR 164.512(f)]: El Dorado County may:
 - i. Report certain injuries or wounds;
 - ii. Provide PHI to identify or locate a suspect, victim, or witness;
 - iii. Alert law enforcement of a death as a result of criminal conduct;
 - iv. Provide confidential information which constitutes evidence of criminal conduct on the premises of El Dorado County
 - v. Provide confidential information in compliance with and as limited by the relevant requirement of court order, subpoena, or similar process authorized by law;
 - vi. If confidential information is to be disclosed to locate a suspect, fugitive, material witness, or missing person, the County may only disclose the following:
 - A. Name and address;
 - B. Date and place of birth;
 - C. Social security number;
 - D. ABO blood type and RH factor;
 - E. Type of injury;
 - F. Date and time of treatment;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number	Page Number:
	L-4	Page 6 of 12
	Date Adopted: 1/23/07	Revised Date:

- G. Date and time of death, if applicable;
- H. Distinguishing physical characteristics.
- I. Decedents [45 CFR 164.512(g)]: El Dorado County may disclose PHI to a coroner or medical examiner to identify a deceased person, determine a cause of death, or other duties as authorized by law.
- m. Funeral Directors [45 CFR 164.512(g)]: El Dorado County may disclose PHI to funeral directors, consistent with applicable law, as needed to carry out their duties or prior to in reasonable anticipation of an individual's death.
- n. Cadaveric organ, eye or tissue donation [45 CFR 164.512(h)]: El Dorado County may disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue to facilitate donation and transplantation.
- o. Research [45 CFR 164.512(i)]: El Dorado County may disclose PHI for research purposes, as specified in the policy "Research Use and Disclosure".
- p. To avert serious threat to health or safety [45 CFR 164.512(j)]: Subject to certain limitation in 45 CFR 164.512(j)(2), PHI may be disclosed if El Dorado County believes in good faith the disclosure is necessary to:
 - i. Prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and to
 - ii. An individual(s) reasonably able to prevent or lessen the threat, including the target of the threat;
 - iii. Inform law enforcement officials to identify or apprehend an individual admitting participation in a violent crime or it appears the individual has escaped from lawful custody.
- q. Correctional institutions [45 CFR 164.512(k)]: El Dorado County may disclose PHI to a correctional institution or a law enforcement official having lawful custody of an inmate, for the purpose of providing health care or ensuring the health and safety of the inmate, other inmates, individuals, or the officers and employees of the correctional institution.
- r. Specialized government functions [45 CFR 164.512(k)]: El Dorado County may disclose PHI for specialized government functions, including authorized federal officials for conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by law.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 7 of 12
	Date Adopted: 1/23/07	Revised Date:

- s. Reporting crime in an emergency [45 CFR 164.512(f)(6)]: A covered health care provider providing emergency health care in response to a medical emergency, other than emergency on the premises of the covered health care provider, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
 - i. The commission and nature of a crime;
 - ii. The location of such crime or the victim(s) of such crime; and
 - iii. The identity, description, and location of the perpetrator of such crime.

Exception: If the covered health provider believes the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (e) of this section.

- 4. Re-disclosure of PHI [45 CFR 164.508 (c)(2)]
 - a. Unless prohibited by state and federal laws, PHI held by El Dorado County and disclosed pursuant to a client's authorization, may be subject to re-disclosure and no longer protected by this policy if the recipient is not subject to federal or state privacy laws, court protective order, or other lawful process.
 - b. Federal regulations 42 CFR Part 2 and 34 CFR 361.38 prohibit El Dorado County from making further disclosure of vocational rehabilitation and alcohol and drug rehabilitation confidential information without specific written authorization from the individual to whom it pertains.
 - c. CA Health & Safety Code § 120980 prohibits further disclosure of HIV tests and information.
 - d. CA Civil Code 56.17 prohibits further disclosure of genetic information without specific written consent from the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical information is not sufficient for this purpose.
 - e. CA W & I 4908 places restriction on re-disclosure of information regarding clients of publicly funded mental health or developmental disability providers.
- 5. Authorization is Not Required, Given the Opportunity to Agree or Object [45 CFR 164.510]
 - a. In limited circumstances the County may use or disclose PHI, without an authorization provided:
 - i. The individual is informed in advance and given the opportunity in advance to agree or object;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 8 of 12
	Date Adopted: 1/23/07	Revised Date:

ii. Unless otherwise protected by law, the County may orally inform the individual and obtain and document the individual's oral agreement.

Exception: For individuals receiving alcohol and drug, mental health, or vocational rehabilitation services, oral permission is insufficient and written authorization is required.

b. Disclosures are limited to a family member, other relative, or close personal friend, or any other person named by the individual involved in the individual's care.

6. Rescinding an Authorization

a. An individual can cancel an authorization by submitting a signed written request to the County **except** when:

- i. The county has taken action in reliance on the authorization;
- ii. The authorization was obtained as a condition of obtaining insurance coverage, and another law provides the insurers with the right to contest a claim under the policy or the policy itself;
- iii. For alcohol and drug treatment participants who may orally revoke an authorization to disclose alcohol and drug treatment programs. Oral revocations must be documented and maintained in the individual's record.

7. Verification of Identity [45 CFR 164.514(h)]

- a. Verification of identity and the authority of a person requesting protected health information will be made prior to any disclosure if the identity or authority of such person is not known.
- b. Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the PHI when such documentation, statement, or representation is a condition of the disclosure.

8. Request Denials

El Dorado County shall deny any request for confidential information without a signed authorization unless it is permitted or required by law.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 9 of 12
	Date Adopted: 1/23/07	Revised Date:

PROCEDURE:

1. Authorization requirements

Unless permitted or required by law, El Dorado County may not use or disclose PHI without a valid authorization [45 CFR 164.508]. When El Dorado County obtains or receives a valid authorization, the use or disclosure of PHI must be consistent with the authorization.

a. Elements of a valid authorization [45 CFR 164.508 & Civil Code 56.10-56.16]:

- i. A description of the information to be used or disclosed that identifies the information in a specific and meaningful way.
- ii. The name or other specific identification of the person or organization authorized to make the request.
- iii. The name or other specific identification of the person or organization authorized to release the information.
- iv. The specific purpose for the use and/or disclosure. "At the request of the individual" is sufficient when the individual initiates the authorization and does not elect to provide a statement of purpose.
- v. An expiration date or an expiration event (e.g., end of research study).
- vi. Signature and date, if signed by a personal representative, a description of the personal representative's authority to act on behalf of the individual.
- vii. Written in plain language.
- viii. A statement of the individual's right to revoke the authorization in writing and instructions how to revoke the authorization.
- ix. A statement that the individual signs the authorization voluntarily and El Dorado County's may or may not condition treatment, payment, enrollment, or eligibility for benefits by stating either:
 - A. El Dorado County may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when it is prohibited to condition authorizations, or

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 10 of 12
	Date Adopted: 1/23/07	Revised Date:

- B. The consequences to the individual who refuses to sign the authorization when El Dorado County can condition treatment, enrollment in the health plan, or eligibility for benefits.
 - x. A statement describing the potential that the information disclosed pursuant to the authorization may be subject to re-disclosure and may no longer be protected.
 - xi. Type face as mandated by CA Civil Code.
 - xii. Statement the individual has the right to receive a copy of the authorization.
 - xiii. Additional elements may be added to the authorization pursuant to specific programs or other state and federal requirement consistent with HIPAA regulations.

- b. An authorization [45CFR 164.508] is invalid if the:
 - i. Expiration date has passed or the event is known to have occurred;
 - ii. Form has not been filled out completely, or is missing element(s) as described in this section;
 - iii. Authorization is known to be revoked;
 - iv. Information in the authorization is known to be false.

- c. Compound authorizations [45 CFR 164.508 (b)(3)]: An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization except as follows:
 - i. An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of PHI for such research or a consent to participate in such research;
 - ii. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.

- d. El Dorado County may only obtain, use, or disclose PHI if the written authorization includes all the required elements of a valid authorization and only use or disclose PHI consistent with the authorized release of information.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 11 of 12
	Date Adopted: 1/23/07	Revised Date:

- e. Prohibition on conditioning of authorization [45 CFR 164.508 (b)(4)]: El Dorado County may not condition an individual's treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, with the following exceptions:
 - i. A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;
 - ii. A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:
 - A. The authorization sought is for the health plan (s) eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and
 - B. The authorization is not for a use or disclosure of psychotherapy notes, and
 - iii. A covered entity may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of PHI to such third party.

- f. A signed authorization is required in the following situations:
 - i. Prior to an individual's enrollment in the County's administered health plan, if necessary for determining eligibility or enrollment;
 - ii. For the use and disclosure of psychotherapy notes (except as listed in section 3. g. of this policy)
 - iii. For disclosures to an employer for use in employment related determinations;
 - iv. For research purposes unrelated to the individual's treatment;
 - v. For any purpose in which state or federal law requires a signed authorization;
 - vi. For marketing purposes except for:
 - A. Face-to-face communications with the individual;
 - B. Promotional gift or nominal value provided by the County.
 - vii. To provide health care that is solely for the purpose of creating protected health information to disclose to a third party. For example, in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by El Dorado County, the evaluator may as a

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	Policy Number L-4	Page Number: Page 12 of 12
	Date Adopted: 1/23/07	Revised Date:

condition of conducting the evaluation, require the parent to sign an authorization to release the evaluation report (but not the underlying psychotherapy notes) to El Dorado County.

- g. Signed authorizations must be retained for a minimum of six years from the date the authorization was last in effect or as required by law [45 CFR § 164.105 (c)(1)].

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: MINIMUM NECESSARY	Policy Number L-5	Page Number: Page 1 of 3
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") states covered entities must make reasonable efforts to limit protected health information ("PHI") to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. El Dorado County is defined as a covered entity, and this policy is to establish the guidelines and the expectations for each workforce member with access to PHI. Workforce members include employees, interns, and volunteers. Workforce members are expected to safeguard the privacy of confidential information in order to minimize exposure or liability to individuals, employees, and El Dorado County.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. General [45 CFR 164.502 (b)]

Only individuals with a legitimate "need to know" may access, use, or disclose PHI. This includes all activities related to treatment, payment, and health care operations on behalf of El Dorado County. Each individual may only access, use, or disclose the minimum information necessary to perform his/her designated role regardless of the extent of access provided.

a. Exceptions: Minimum necessary does not apply to:

- i. Disclosures to or requests by a health care provider needed for treatment;
- ii. Use or disclosures at the request of an individual regarding the individual's PHI as permitted or required;
- iii. Uses or disclosures authorized by the individual within the scope of the authorization;
- iv. Disclosures made to the U.S. Department of Health and Human Services ("DHHS"), the Office of Civil Rights, or other legal authority for compliance and enforcement purposes;
- v. Uses or disclosures required by law;
- vi. Uses or disclosures required for compliance with the HIPAA Transaction Rule.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: MINIMUM NECESSARY	Policy Number L-5	Page Number: Page 2 of 3
	Date Adopted: 1/23/07	Revised Date:

2. Minimum Necessary [45 CFR 164.514(d)(3)]

- a. When using or disclosing PHI to another entity, or when El Dorado County requests PHI from another entity, El Dorado County employees must make reasonable efforts to limit the amount of PHI to the minimum necessary needed to accomplish the intended purpose of the use, disclosure, or request.
- b. In accordance with minimum necessary, El Dorado County will not disclose an entire medical record unless the authorization justifies why the entire medical record is needed or the authorization specifically authorizes the entire medical record to be released.
- c. El Dorado County may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:
 - i. Making permitted disclosures to public officials, if the public official represents the information requested is the minimum necessary for the stated purpose(s);
 - ii. The information is requested by another covered entity;
 - iii. The information is requested by a professional who is a member of its workforce or is a business associate of the covered entity for the purposes of providing professional services to the County, and the professional represents that the information requested is the minimum necessary for the stated purpose(s).

3. Access to PHI [45 CFR 164.514(d)(2)]

El Dorado County will establish role-based categories which will identify the type(s) of information necessary for workforce members to perform their assigned job duties. Program areas will identify the category or categories of PHI needed for persons, or classes of persons, to carry out their responsibilities. Categories will include all information such as information accessible by computer or kept in files.

4. Routine and Recurring Disclosures [45 CFR 164.514(d)(3)]

Disclosures made on a routine, recurring basis will be evaluated by program areas to identify the types of PHI to be disclosed, the types of persons who would receive the PHI information, and the conditions that would apply for such access.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: MINIMUM NECESSARY	Policy Number L-5	Page Number: Page 3 of 3
	Date Adopted: 1/23/07	Revised Date:

5. Non-routine Disclosures [45 CFR 164.514(d)(3)]

Request for non-routine disclosures will be reviewed on an individual basis and program areas will develop criteria for determining, and limiting disclosure to, only the minimum amount of PHI necessary to accomplish the purpose of the disclosure.

PROCEDURE:

1. Routine and recurring disclosure(s) of PHI, El Dorado County's program areas will:
 - a. Determine who is requesting the confidential information and the purpose of the request;
 - b. If the request is not routine or recurring, refer to non-routine disclosure procedures;
 - c. Confirm the disclosure is permitted or required in accordance with El Dorado County's policies and procedures;
 - d. Identify the minimum necessary amount of PHI required to respond to the request, and
 - e. Determine if the disclosure must be included in the accounting of disclosure log and document the disclosure as required.
2. Non-routine disclosure(s) of PHI, El Dorado County's program areas will:
 - a. Determine who is requesting the PHI and the purpose of the request;
 - b. Determine if the individual's confidential information can be disclosed pursuant to El Dorado County's policies and procedures;
 - c. Determine what and how much PHI is necessary to comply with the disclosure request in accordance with El Dorado County's policies and procedures;
 - d. Determine if the disclosure must be included in the accounting of disclosure log and document the disclosure as required.

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS	Policy Number L-6	Page Number: Page 1 of 2
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") requires covered entities to establish appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information ("PHI") [45 CFR §164.530(c)]. The purpose of this policy is to establish the appropriate safeguards and to minimize the risk of unauthorized access, use, or disclosure of PHI.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. Reasonable Precautions [45 CFR §164.530(c)(2)]

El Dorado County must take reasonable precautions to protect PHI from intentional or unintentional use or disclosure by implementing appropriate administrative, technical, and physical safeguards. Administrative safeguards include, as necessary, developing and revising management policies and procedures. Physical safeguards include preventing unauthorized access by securing rooms and media. Technical safeguards are implemented procedures designed to protect sensitive information.
2. Administrative Safeguards
 - a. Implement role-based access and the Minimum Necessary Policy to promote administrative safeguards.
 - i. Role based access is a form of security which allows access to data based on job function or responsibilities.
 - b. Conduct periodic internal reviews to evaluate and improve the effectiveness of current safeguards.
 - c. Develop and implement department policies when necessary to enhance administrative safeguards.
 - i. Members of El Dorado County's workforce who have access to protected health information will sign a privacy/security acknowledgment form to adhere to privacy and security policies.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS	Policy Number L-6	Page Number: Page 2 of 2
	Date Adopted: 1/23/07	Revised Date:

3. Technical and Physical Safeguards

a. Paper Documents

- i. If available, El Dorado County will store files and documents containing PHI in locked rooms or storage systems;
- ii. If lockable storage is not available, staff must take reasonable efforts to ensure the safety of confidential information;
- iii. El Dorado County will ensure files and documents awaiting disposal are appropriately labeled, disposed of on a regular basis, and all reasonable measures are taken to minimize access.
- iv. El Dorado County will ensure shredding of files and documents are performed in a timely manner, consistent with record retention policies.

b. Oral Communications

- i. El Dorado County staff must take reasonable steps to protect the privacy of all verbal exchanges or discussions of confidential information;
- ii. El Dorado County must foster employee awareness that verbal exchanges have the potential for inadvertent disclosures of confidential information.

c. Visual Access

- i. El Dorado County must take reasonable steps to shield observable confidential information from unauthorized disclosure on computer screens and paper documents.
 - A. Computer screens: El Dorado County will make every effort to ensure confidential information on computer screens is shielded from unauthorized persons.
 - B. Paper documents: El Dorado County staff must be aware of the risks regarding how paper documents are used and handled and take necessary precautions to safeguard confidential information.

Primary Department: Privacy Compliance Office

References: 45 CFR § 164.530 (c)

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: RESEARCH USE AND DISCLOSURE	Policy Number L-7	Page Number: Page 1 of 5
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") supplements Federal and State laws which specifies how human research can be conducted. This policy specifies how El Dorado County may use or disclose confidential information about individuals for research purposes as permitted by 45 CFR §164.508(b)(3)(i) and 45 CFR §164.512(i).

Note: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. Research

Research refers to a systematic investigation including research development, testing, and evaluation [45 CFR § 164.501]. This policy supplements other federal or state laws such as the Common Rule [45 CFR Part 46] that may govern research protocol. The Common Rule (regulations requiring an Institutional Review Board ("IRB") and approval of research studies using human subjects with federal funding) must be followed to the extent it governs El Dorado County.

- a. El Dorado County may use or disclose protected health information ("PHI") for research purposes when:
 - i. A valid authorization is signed by an individual,
 - ii. A waiver of authorization has been approved by an Institutional Review Board ("IRB") or by a Privacy Board,
 - iii. A review of PHI is conducted preparatory to research, subject to limitations,
 - iv. Research is conducted solely on decedent's information, subject to limitations,
 - v. A limited data set agreement is approved {45 CFR § 164.514(e)},
 - vi. PHI is de-identified [45 CFR § 164.514(e)], or
 - vii. It is required by law [45 CFR §164.512(a)].
- b. El Dorado County may also conduct public health studies, studies that are required by law, and studies or analyses related to its health care operations.
- c. PHI disclosed for research purposes is subject to an accounting of disclosures.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: RESEARCH USE AND DISCLOSURE	Policy Number L-7	Page Number: Page 2 of 5
	Date Adopted: 1/23/07	Revised Date:

2. Individual Research Authorization

- a. El Dorado County may use and disclose protected health information for research purposes with a signed authorization from an individual.
 - i. The authorization must meet all the requirements as described in the policy "Use and Disclosure of Protected Health Information".
 - ii. If the research includes treatment, the provider may condition the provision of research related treatment on the provision an authorization is obtained for use and disclosure for such research.

3. Authorization Waiver

- a. El Dorado County may use or disclose PHI for research without an authorization regardless of the source of funding, provided the covered entity obtains prior to using or disclosing PHI, documentation of an authorization waiver or alteration approved by either:
 - i. An Institutional Review Board established in accordance with federal regulations [45 CFR Part 46]; or
 - ii. A privacy board that:
 - A. Includes members with diverse backgrounds and the appropriate professional competency, necessary to review the effect of research protocols on an individual's privacy rights and related interests.
 - B. Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person affiliated with any of these entities [45 CFR § 164.512 (i)(1)(i)].
- b. The IRB or privacy board waiver approval must document the following:
 - i. The name of the board and the date of the approval.
 - ii. A statement that the IRB or privacy board has determined the alteration or waiver, in whole or in part, authorizes the use or disclosure of PHI, and involves minimal risk to the privacy of individuals with the following measures:
 - A. An adequate plan to protect the identifiers from improper use and disclosure;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: RESEARCH USE AND DISCLOSURE	Policy Number L-7	Page Number: Page 3 of 5
	Date Adopted: 1/23/07	Revised Date:

- B. An adequate plan to destroy the identifiers at the earliest opportunity consistent with the conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law;
 - C. An adequate written assurance the PHI will not be reused or disclosed to any other person or entity, except as, required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of PHI would be permitted.
 - iii. The research would not be feasible without the waiver of alteration; and
 - iv. The research would not be feasible without access to and use of PHI.
 - c. A brief description of the PHI deemed to be necessary by the IRB or privacy board to be used or disclosed.
 - d. A statement that the alteration or waiver of authorization has been reviewed and approved under normal or expedited procedures according to 45 CFR § 164.512 (i)(2)(iv).
 - e. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.
4. Research Preparation [45 CFR § 164.512(i)(1)(ii)]
- In developing a research protocol or in preparation for research, a researcher may request access to individual confidential information. El Dorado County must determine if such use or disclosure is permitted by state or federal laws without patient authorization or approval from an IRB or privacy board. If access is granted, the researcher will provide written representation that:
- a. The PHI is to prepare a research protocol or for similar purposes preparatory to research,
 - b. No PHI is to be removed from the covered entity by the researcher in the course of the study, and
 - c. The researcher agrees not to use or further disclose the information other than as provided in the written agreement, and to maintain appropriate safeguards to prevent the use or disclosure of the information.
5. Research with Decedent's PHI [45 CFR § (i)(1)(iii)]
- In developing a research protocol or in preparation for research, a researcher may request access to confidential information of decedents. El Dorado County must determine if such use or disclosure is permitted by state or federal laws without a personal representative's authorization or approval from

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: RESEARCH USE AND DISCLOSURE	Policy Number L7	Page Number: Page 4 of 5
	Date Adopted: 1/23/07	Revised Date:

an IRB or privacy board. There may be instances where it would be inappropriate to disclose sensitive medical information. If access is granted, the researcher will provide written representation:

- a. The PHI is for research of decedents;
- b. If requested, documentation of the death of the decedent;
- c. The PHI is necessary for research purposes;
- d. The researcher agrees not to use or further disclose the information other than as provided in the written agreement, and to maintain appropriate safeguards to prevent the use or disclosure of the information.

6. Limited Data Set [45 CFR § 164.514(e)]

El Dorado County may use or disclose a limited data set if the covered entity enters into a data use agreement with the limited data set recipient as specified in the "De-identified Protected Health Information, Limited Data Sets, and Data Use Agreements Policy".

7. De-identified PHI [45 CFR § 164.514]

El Dorado County may use PHI when certain identifiers are blocked or deleted as defined in the "De-identified Protected Health Information, Limited Data Sets, and Data Use Agreement Policy".

8. Required by Law [45 CFR § 164.512(a)]

Use or disclosure of PHI is permitted when required by law.

9. Research and Accounting of Disclosures [45 CFR § 164.528 (b)(4)]

- a. If a research study consists of 50 or more individuals, the information provided in the accounting of disclosures may include:
 - i. The name of the protocol or research study;
 - ii. A description and purpose of the research activity;
 - iii. A brief description of the type of PHI that was disclosed;
 - iv. The date or period of time during which such disclosure occurred, or may have occurred, including the date of the last such disclosure during the accounting period;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: RESEARCH USE AND DISCLOSURE	Policy Number L-7	Page Number: Page 5 of 5
	Date Adopted: 1/23/07	Revised Date:

- v. The name, address, and telephone number of the entity that sponsored the research and the researcher to whom the information was disclosed;
- vi. A statement that the PHI of the individual may or may not have been disclosed for particular protocol or other research activity.
- b. If it is reasonably likely that the PHI of the individual was disclosed for a research protocol or activity, El Dorado County will, at the request of the individual, assist in contacting the entity that sponsored the research and the researcher.

Primary Department: Privacy Compliance Office

References: 45 CFR § 160 - 164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: DE-IDENTIFIED PROTECTED HEALTH INFORMATION, LIMITED DATA SETS, DATA USE AGREEMENTS	Policy Number L-8	Page Number: Page 1 of 4
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") provides standards how individual protected health information ("PHI") can be used and disclosed with de-identified information, a limited data set and data use agreement.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. General
 - a. Unless otherwise restricted or prohibited by federal or state law, El Dorado County may use or disclose de-identified information as specified in this policy.
 - b. El Dorado County may use or disclose a limited data set as specified in this policy.
2. De-Identified PHI [45 CFR § 164.514(a)]
 - a. De-identified PHI is information with certain identifiers blocked or deleted in such a manner that there is no reasonable basis to believe the remaining information can be used to identify an individual. De-identified information is not considered individually identifiable health information or PHI if either (i) or (ii) below is applied:
 - i. A person with the appropriate knowledge and experience with generally accepted statistical and scientific principles applies the methods to render PHI as de-identified and:
 - A. It has been determined there is minimal risk the information could be used alone or in combination with other reasonably available information by the recipient to identify an individual who is a subject of the information;
 - B. The method(s) to de-identify the PHI is documented and the analyses justifies such determination, or
 - ii. The following identifiers of the individual or the individual's relatives, employers, or household members have been removed:
 - A. Names;

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: DE-IDENTIFIED PROTECTED HEALTH INFORMATION, LIMITED DATA SETS, DATA USE AGREEMENTS	Policy Number L-8	Page Number: Page 2 of 4
	Date Adopted: 1/23/07	Revised Date:

- B. All geographic subdivisions smaller than a state including street address, city, county, precinct, and zip code. However, the initial three digits of a zip code may remain, if according to the current publicly available data from the Bureau of the Census:
 - I. The geographic unit formed by combining all zip codes with the same initial three digits contain more than 20,000 people or,
 - II. The initial three digits of a zip code containing less than 20,000 people are changed to 000.
 - C. All elements of dates (except year) for dates directly related to an individual, including the birth date, admission date, discharge date, and date of death; all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may aggregated into a single category of age 90 or older;
 - D. Telephone numbers;
 - E. Fax numbers;
 - F. Electronic mail addresses;
 - G. Social security numbers;
 - H. Medical record numbers;
 - I. Health plan beneficiary numbers;
 - J. Accounts numbers;
 - K. Certificates/license numbers;
 - L. Vehicle identifiers and serial numbers, including license plate numbers;
 - M. Device identifiers and serial numbers;
 - N. Web Universal Resource Locators (URLs);
 - O. Internet Protocols (IP) address numbers;
 - P. Biometric identifiers, including finger and voice prints;
 - Q. Full face photographic images and any comparable images and;
 - R. Any other unique identifying number, characteristic, or code, except as permitted.
- b. El Dorado County does not have actual knowledge that the de-identified information could be used alone or in combination with other information to identify an individual who is a subject of the information.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: DE-IDENTIFIED PROTECTED HEALTH INFORMATION, LIMITED DATA SETS, DATA USE AGREEMENTS	Policy Number L-8	Page Number: Page 3 of 4
	Date Adopted: 1/23/07	Revised Date:

- c. El Dorado County may assign a code or other means of record identification to allow de-identified information to be re-identified provided:
 - i. The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and
 - ii. The code or other means of record identification is not used or disclosed for any other purpose and the mechanism for re-identification is not disclosed.

- 3. Limited Data Set [45 CFR § 514(e)]
 - a. El Dorado may use or disclose a limited data set if the County enters into a data use agreement with the limited data set recipient. A limited data set is PHI which excludes the following direct identifiers of the individuals or the relatives, employers, or household members of the individual:
 - i. Names,
 - ii. Postal address information, other than town or city, state, and zip code,
 - iii. Telephone numbers,
 - iv. Fax numbers,
 - v. Electronic mail addresses,
 - vi. Social security numbers,
 - vii. Medical record numbers,
 - viii. Health plan beneficiary numbers,
 - ix. Accounts numbers,
 - x. Certificate/license numbers,
 - xi. Vehicle identifiers and serial numbers, including license plate numbers,
 - xii. Device identifiers and serial numbers,
 - xiii. Web Universal Resource Locators (URLs),
 - xiv. Internet Protocol (IP) address numbers,
 - xv. Biometric identifier, including finger and voice prints, and
 - xvi. Full face photographic images and any comparable images.
 - b. El Dorado County may use or disclose a limited data set only for research purposes, public health activities, or health care operations. Limited data sets may not be used for any other purposes.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: DE-IDENTIFIED PROTECTED HEALTH INFORMATION, LIMITED DATA SETS, DATA USE AGREEMENTS	Policy Number L-8	Page Number: Page 4 of 4
	Date Adopted: 1/23/07	Revised Date:

- c. El Dorado County may use PHI to create a limited data set or disclose to a business associate to create a limited data set, whether or not the limited data set is to be used by the covered entity.

- 4. Data Use Agreement [45 CFR § 514(e)]
 - a. El Dorado County may use or disclose a limited data set as specified by this policy if the County enters into a data use agreement restricting the recipient of the limited data set to use or disclose PHI for limited purposes. The limited data use agreement must:
 - i. Establish the permitted uses and disclosures by the recipient;
 - ii. Restrict the recipient from further using or disclosing the information in a manner which would violate the agreement or as otherwise permitted by law;
 - iii. Establish who is permitted to use or receive the limited data set;
 - iv. The recipient must use appropriate safeguards to prevent the use or disclosure of the information other than as provided by the agreement;
 - v. The recipient will report to the County any use or disclosure of the information not provided by its data use agreement of which it becomes aware;
 - vi. The recipient will ensure any agents, including a subcontractor to whom it provides the limited data set, agree to the same restrictions and conditions of the data use agreement;
 - vii. The recipient agrees not to identify the information or contact the individuals.
 - b. If El Dorado County becomes aware the limited data use recipient engages in a pattern of activity or practice which constitutes a material breach or violation of the data use agreement, the County will:
 - i. Take reasonable steps to cure the breach or end the violation, or
 - ii. Discontinue disclosure of PHI to the recipient and report the problem to the Secretary.

Primary Department: Privacy Compliance Office

References: 45 CFR § 164.514

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: BUSINESS ASSOCIATES	Policy Number L-9	Page Number: Page 1 of 3
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") requires El Dorado County to execute a written contract or Memorandum of Understanding when protected health information ("PHI") is disclosed to a business associate. This policy provides guidelines and the required provisions when a business associate agreement or Memorandum of Understanding is necessary.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. General

- a. A business associate is an individual or organization that is not part of the El Dorado County's workforce and acts on behalf of the County. The business associate performs functions or activities involving the use or disclosure of individually identifiable health information or protected health information.
- b. El Dorado County may disclose protected health information to a business associate and allow a business associate to create or receive PHI on its behalf if the County obtains satisfactory assurance that the business associate will safeguard the information through a written contract.
- c. El Dorado County is not required to monitor or oversee how the business associate carries out privacy safeguards nor liable for actions of the business associate. However, El Dorado County is responsible for taking reasonable steps to cure breaches or end violations, and if unsuccessful, terminate the contract.

2. Business Associate

- a. A business associate is a person or organization not part of El Dorado County's workforce who performs or assists in the performance of:
 - i. A function or activity involving the use or disclosure of PHI including claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing, or

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: BUSINESS ASSOCIATES	Policy Number L-9	Page Number: Page 2 of 3
	Date Adopted: 1/23/07	Revised Date:

- ii. Any other function or activity regulated by HIPAA involving the use or disclosure of PHI including legal, accounting, accreditation, or consulting services [45 CFR § 160.103(a)(ii)].
 - b. A covered entity participating in an organized health care arrangement ("OHCA") that performs a function or activity as described above, does not through the performance of such function or activity or the provision of such service become a business associate of other covered entities participating in such OHCA.
 - c. A covered entity may be a business associate of another covered entity.
3. Business Associate Agreement
- a. The agreement between El Dorado County and the business associate will establish the permitted and required uses and disclosures of PHI. The business associate agrees to:
 - i. Not use or further disclose PHI other than as permitted or required by the agreement or as required by law;
 - ii. Use appropriate safeguards to prevent the use or disclosure of the information other than as provided for by the agreement;
 - iii. Report to El Dorado County any use or disclosure not provided for by the agreement or otherwise in violation of the Privacy Rule;
 - iv. Ensure any agent or subcontractor to whom the business associate provides PHI, also agrees to the same restrictions and conditions that apply to the business associate under the agreement;
 - v. Provide access to PHI in a designated record set to the County, or to an individual as directed by the County in accordance with 45 CFR § 164.524.
 - vi. Make any amendment(s) to PHI in a designated record set as directed by the County in accordance with 45 CFR § 164.526;
 - vii. Document such disclosures of PHI and the information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528;
 - viii. Make records available related to the use, disclosure, and privacy protection of PHI received from El Dorado County, or PHI created or received by the business associate on behalf of El Dorado County, or to the Secretary of the United States Department of Health and Human

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: BUSINESS ASSOCIATES	Policy Number L-9	Page Number: Page 3 of 3
	Date Adopted: 1/23/07	Revised Date:

Services for the purposes of investigating or auditing El Dorado County's compliance in the time and manner designated by El Dorado County or the Secretary;

- ix. Upon termination of the agreement for any reason, the business associate shall:
 - A. Return all PHI received from El Dorado County, or PHI created or received by the business associate on behalf of El Dorado County, and required to be retained by the Privacy Rule;
 - B. Return or destroy all other PHI received from El Dorado County or created or received by the business associate on behalf of El Dorado County;
 - C. Retain no copies of the PHI.
- x. In the event the business associate determines that returning or destroying the PHI is not feasible, the business associate shall provide El Dorado County notification of the conditions that make return of the PHI not feasible. If El Dorado County agrees the return of the PHI is not feasible, the business associate shall extend the protections of the agreement to such PHI and limit further use and disclosure of such PHI for so long as the business associate or any of its agents or subcontractors maintains such PHI.
- b. If the business associate is another governmental entity, El Dorado County may enter into a memorandum of understanding rather than a contract which meets the same requirements as this policy.

4. Business Associate Non-Compliance

- a. If the County is aware of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the agreement, the County must take reasonable steps to cure the breach or end the violation.
- b. If such steps are unsuccessful, the County must:
 - i. Terminate the contract or arrangement if feasible, or
 - ii. Report the problem to the Department of Health and Human Services Office for Civil Rights.

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: SANCTIONS, PENALTIES, AND WHISTLEBLOWERS	Policy Number L-10	Page Number: Page 1 of 3
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") of 1996 requires covered entities to have and apply appropriate sanctions against workforce members who fail to comply with the Privacy Rule and the privacy policies and procedures of the covered entity. Defined as a covered entity, El Dorado County is required by 45 CFR § 164.530(e)(1) to establish a sanction policy. Therefore, the purpose of this policy is to provide guidelines for workforce members, establish a sanction policy, and define the disciplinary actions that may result from a privacy violation.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. Workforce Member's Responsibilities

- a. Workforce members from El Dorado County must guard against improper use or disclosure of protected health information ("PHI"). Workforce members are employees, volunteers, trainees, and other persons whose performance is under direct control whether or not they are paid by El Dorado County.
- b. Workforce members who are unclear if a use or disclosure is permitted should first consult with an immediate supervisor or contact the Privacy Officer.
- c. Workforce members are required to be aware of privacy and security responsibilities and to protect confidential information from improper use and/or disclosure.
- d. All workforce members who may have access to protected health information must attend a Privacy and Security Awareness training.
- e. All workforce members who may have access to protected health information will sign an acknowledgement to protect confidential information.

2. Sanctions and Mitigation

- a. Any workforce member who fails to comply with the Privacy Rule and El Dorado County's privacy policies and procedures will be subject to disciplinary actions up to and including termination

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: SANCTIONS, PENALTIES, AND WHISTLEBLOWERS	Policy Number L-10	Page Number: Page 2 of 3
	Date Adopted: 1/23/07	Revised Date:

according to the established personnel policies of El Dorado County. El Dorado County will document sanctions, if any, that are applied.

- b. Any workforce member who knowingly and willfully violates state or federal privacy laws may be subject to criminal investigation and prosecution and/or civil monetary penalties.
- c. El Dorado County must mitigate to the extent practical any harmful effect of any improper or unauthorized use or disclosure of PHI that is known.

3. Refrain from Intimidating or Retaliatory Acts [45 CFR §164.530(e)]

- a. El Dorado County and County employees may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against:
 - i. An individual exercising any rights established under El Dorado County's policies or for filing a complaint with El Dorado County or the Office for Civil Rights.
 - ii. An individual or other person for testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing related to El Dorado County's policies and procedures.
 - iii. An individual opposing any unlawful act or practice provided the act or practice is unlawful, and the manner of the opposition is reasonable and does not involve a disclosure of protected health information in violation of El Dorado County's policies.

4. Whistleblower [45 CFR §164.502 (j)]

- a. If an El Dorado County employee or business associate believes that El Dorado County has engaged in conduct that is unlawful, violates professional or clinical standards, or the care, services, or conditions provided by the County potentially endangers one or more patients, workers, or the public, PHI may be disclosed if the disclosure is made in good faith and the disclosure is made to:
 - i. A health oversight agency or public health authority authorized by law to investigate or oversee the relevant conduct or conditions or,
 - ii. An appropriate health care accreditation organization.

EXHIBIT C



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: PRIVACY: SANCTIONS, PENALTIES, AND WHISTLEBLOWERS	Policy Number L-10	Page Number: Page 3 of 3
	Date Adopted: 1/23/07	Revised Date:

Primary Department: Privacy Compliance Office

References: 45 CFR §160-164

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GROUP HEALTH PLANS	Policy Number L-11	Page Number: Page 1 of 5
	Date Adopted: 1/23/07	Revised Date:

BACKGROUND:

The Health Insurance Portability and Accountability Act ("HIPAA") mandates specific requirements for plan sponsors and health plans. A plan sponsor is defined by 29 U.S.C 1002(16)(B) as an employer for an employee benefit plan established or maintained by a single employer. A group health plan is defined as an employee welfare benefit plan (as defined in the Employee Retirement Income and Security Act of 1974 and 29 U.S.C 1002(1)) including insured and self-insured plans to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise that:

- Has 50 or more participants or,
- Is administered by an entity other than the employer that established and maintains the plan.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. Group Health Plan Requirements 45CFR§164.504(f)(1)
 - a. The group health plan or a health insurance issuer or HMO may disclose summary health information to the plan sponsor such as claims history, claims expenses, or type of claims, if the plan sponsor requests the summary health information for the purposes of:
 - i. Obtaining premium bids from health plans for providing health insurance coverage under the group health plan or,
 - ii. Modifying, amending, or terminating the group health plan.
 - b. The group health plan or health insurance issuer or HMO with respect to the group health plan, may disclose whether an individual is participating in the group health plan or is enrolled in or has dis-enrolled from a health insurance issuer or HMO offered by the plan.
 - c. The group health plan must ensure plan documents restrict the uses and disclosures of protected health information to the plan sponsor by a health insurance issuer or HMO consistent with this policy unless it is permitted or required by law.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GROUP HEALTH PLANS	Policy Number L-11	Page Number: Page 2 of 5
	Date Adopted: 1/23/07	Revised Date:

2. Notice of Privacy Practices 45CFR§164.520

- a. An individual enrolled in a group health plan has a right to notice:
 - i. From the group health plan, if, and to the extent that the individual does not receive health benefits under the group health plan through an insurance contract with a health insurance issuer or HMO or,
 - ii. From the health insurance issuer or HMO with respect to the group health plan through which such individuals receive their health benefits under the group health plan.
- b. A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and that creates or receives health information in addition to summary health information or information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan must:
 - iii. Maintain a notice under this section
 - iv. Provide the notice upon request to any person.
- c. A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and does not create or receive health information other than summary health information or information on whether an individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan, is not required to maintain or provide a notice.
- d. Exception for inmates: An inmate does not have a right to notice under this section, and the requirements of this section do not apply to a correctional institution that is a covered entity.

PROCEDURES:

1. Group Health Plan Documents 45CFR§164.504(f)(2)
 - a. Other than summary health information, plan documents of the group health plan must be amended to incorporate provisions to:
 - i. Establish the permitted and required uses and disclosure of such information by the plan sponsor, provided that such permitted and required uses and disclosures is permitted or required by law.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GROUP HEALTH PLANS	Policy Number L-11	Page Number: Page 3 of 5
	Date Adopted: 1/23/07	Revised Date:

- ii. Provide that the group health plan will disclose protected health information to the plan sponsor only upon receipt of a certification by the plan sponsor that the plan documents have been amended to incorporate the following provisions and the plan sponsor agrees to:
 - A. Not use or further disclose the information other than as permitted or required by law,
 - B. Ensure that any agents, including a subcontractor, to whom it provides protected health information received from the group health plan agree to the same restrictions and conditions that apply to the plan sponsor,
 - C. Not use or disclose the information for employment related actions and decisions or in connection with any other benefit or employee benefit plan of the plan sponsor,
 - D. Report to the health plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware,
 - E. Make available protected health information in accordance with an individual's right to access their health information,
 - F. Make available health information for amendment and incorporate any amendments in accordance with 45CFR§164.526,
 - G. Make available the information required to provide an accounting of disclosures,
 - H. Make its internal practices, books, and records relating to the use or disclosure of protected health information received from the group health plan available to the Secretary to determine compliance,
 - I. If feasible and when no longer needed, return or destroy all protected health information received from the group health plan that the sponsor still maintains in any form and retain no copies of such information; except that, if the return or destruction is not feasible, limit further uses and disclosures of such protected health information.
- iii. Provide adequate separation between the group health plan and the plan sponsor. The plan documents must:
 - A. Describe those employees or classes of employees or other persons under the control of the plan sponsor to be given access to the protected health for payment purposes, health care operations, or other related matters needed in the ordinary course of business.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GROUP HEALTH PLANS	Policy Number L-11	Page Number: Page 4 of 5
	Date Adopted: 1/23/07	Revised Date:

- B. Restrict the access to and use by such employees and other persons described by this policy to the plan administration functions that the plan sponsor performs for the group health plan,
 - C. Provide an effective mechanism for resolving any issues of noncompliance by persons described by this policy.
2. Group Health Plan Uses and Disclosures 45CFR§164.504(f)(3)
- a. A group health plan may:
 - i. Disclose protected health information to a plan sponsor to carry out plan administration functions,
 - ii. Not permit a health insurance issuer or HMO with respect to the group health plan to disclose protected health information to the plan sponsor except as permitted by this policy,
 - iii. Not disclose and may not permit a health insurance issuer or HMO to disclose protected health information to a plan sponsor unless a statement of such disclosure is included in the Notice of Privacy Practices, and
 - iv. Not disclose protected health information to the plan sponsor for the purpose of employment related actions or decisions or in connection with any other benefit or employee benefit plan of the plan sponsor.
3. Group Health Plan Notice of Privacy Practices Requirements 45CFR§164.520(c)(1)
- a. A health plan must provide notice:
 - i. No later than the compliance date for the health plan to individuals then covered by the plan,
 - ii. Thereafter, at the time of enrollment, to individuals who are new enrollees,
 - iii. Within 60 days of a material revision to the notice, to individuals then covered by the plan.
 - iv. No less frequently than once every three years, the health plan must notify individuals then covered by the plan of the availability of the notice and how to obtain the notice.
 - v. The health plan must provide the notice to the named insured of a policy under which coverage is provided to the named insured and one or more dependents.
 - vi. If El Dorado County has more than one notice, provide the notice that is relevant to the individual requesting the notice.

EXHIBIT C



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: PRIVACY: GROUP HEALTH PLANS	Policy Number L-11	Page Number: Page 5 of 5
	Date Adopted: 1/23/07	Revised Date:

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164