

## Notice of Privacy Practices

### Purpose of this Notice

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

The New Mexico Retiree Health Care Authority (NMRHCA) group health plan, including the self-funded (Medicare and non-Medicare) medical and prescription drug plan options, COBRA administration, and administration of an External Review process incorporating Independent Review Organizations, (hereafter referred to as the “Plan”) is required by law to take reasonable steps to maintain the privacy of your personally identifiable health information (called **Protected Health Information or PHI**) and to inform you about the Plan’s legal duties and privacy practices with respect to Protected Health Information including:

1. The Plan’s uses and disclosures of PHI,
2. Your rights to privacy with respect to your PHI,
3. The Plan’s duties with respect to your PHI,
4. Your right to file a complaint with the Plan and with the Secretary of the U.S. Department of Health and Human Services (HHS),
5. The person or office you should contact for further information about the Plan’s privacy practices, and
6. To notify affected individuals following a breach of unsecured Protected Health Information.

PHI use and disclosure by the Plan is regulated by the Federal law, Health Insurance Portability and Accountability Act, commonly called HIPAA. You may find these rules in Section 45 of the Code of Federal Regulations, Parts 160 and 164. This Notice attempts to summarize key points in the regulation. The regulations will supersede this Notice if there is any discrepancy between the information in this Notice and the regulations. The Plan will abide by the terms of the Notice currently in effect. The Plan reserves the right to change the terms of this Notice and to make the new Notice provisions effective for all PHI it maintains.

### Effective Date

The effective date of this Notice is July 1, 2019, and this notice replaces notices previously distributed to you.

### Privacy Officer

The Plan has designated a Privacy Officer to oversee the administration of privacy by the Plan and to receive complaints. The Privacy Officer may be contacted at:

**Privacy Officer for the NMRHCA**  
Director of Communications  
6300 Jefferson St. NE, Suite 150, Albuquerque, NM 87109  
Telephone: 505-222-6403 Email: RHCA.Security@state.nm.us

## Your Protected Health Information

The term **“Protected Health Information” (PHI)** includes all information related to your past, present or future health condition(s) that individually identifies you or could reasonably be used to identify you and is transferred to another entity or maintained by the Plan in oral, written, electronic or any other form.

PHI does not include health information contained in records held by NMRHCA related to health information on disability, work- life insurance, dependent care flexible spending accounts, etc.

## When the Plan May Disclose Your PHI

Under the law, the Plan may disclose your PHI without your written authorization in the following cases:

- **At your request.** If you request it, the Plan is required to give you access to your PHI in order to inspect it and copy it.
- **As required by an agency of the government.** The Secretary of the Department of Health and Human Services may require the disclosure of your PHI to investigate or determine the Plan’s compliance with the privacy regulations.
- **For treatment, payment or health care operations.** The Plan and its Business Associates will use your PHI (except psychotherapy notes in certain instances as described below) without your consent, authorization or opportunity to agree or object in order to carry out treatment, payment, or health care operations.

Definitions and Examples of Treatment, Payment, and Health Care Operations	
<b>Treatment</b> is health care.	Treatment is the provision, coordination, or management of health care and related services. It also includes but is not limited to coordination of benefits with a third party and consultations and referrals between one or more of your health care providers. <ul style="list-style-type: none"><li>• <b>For example:</b> The Plan discloses to a treating specialist the name of your treating primary care physician so the two can confer regarding your treatment plan.</li></ul>
<b>Payment</b> is paying claims for health care and related activities.	Payment includes but is not limited to making payment for the provision of health care, determination of eligibility, claims management, and utilization review activities such as the assessment of medical necessity and appropriateness of care. <ul style="list-style-type: none"><li>• <b>For example:</b> The Plan tells your doctor whether you are eligible for coverage or what percentage of the bill will be paid by the Plan. If we contract with third parties to help us with payment, such as a claims payer, we will disclose pertinent information to them. These third parties are known as “Business Associates.”</li></ul>
<b>Health Care Operations</b> keep the Plan operating soundly.	Health care operations includes but is not limited to quality assessment and improvement, patient safety activities, business planning and development, reviewing competence or qualifications of health care professionals, underwriting, enrollment, premium rating, and other insurance activities relating to creating or renewing insurance contracts. It also includes disease management, case management, conducting or arranging for medical review, legal services, and auditing functions including fraud and abuse compliance programs and general administrative activities. <ul style="list-style-type: none"><li>• <b>For example:</b> The Plan uses information about your medical claims to refer you to a health care management program, to project future benefit costs or to audit the accuracy of its claims processing functions.</li></ul>

The Plan does not need your consent or authorization to release your PHI when you request it, a government agency requires it, or the Plan uses it for treatment, payment, or health care operations.

The Plan Sponsor has amended its Plan documents to protect your PHI as required by Federal law. The Plan may disclose PHI to the Plan Sponsor for purposes of treatment, payment, and health care operations in accordance with the Plan amendment. The Plan may disclose PHI to the Plan Sponsor for review of your appeal of a benefit or for other reasons related to the administration of the Plan.

## When the Disclosure of Your PHI Requires Your Written Authorization

Generally, the Plan will require that you sign a valid authorization form in order to use or disclose your PHI other than:

- When you request your own PHI
- A government agency requires it, or
- The Plan uses it for treatment, payment or health care operation.

You have the right to revoke an authorization.

Although the Plan does not routinely obtain psychotherapy notes, generally, an authorization will be required by the Plan before the Plan will use or disclose psychotherapy notes about you. Psychotherapy notes are separately filed notes about your conversations with your mental health professional during a counseling session. They do not include summary information about your mental health treatment. However, the Plan may use and disclose such notes when needed by the Plan to defend itself against litigation filed by you.

The Plan generally will require an authorization form for uses and disclosure of your PHI for marketing purposes (meaning a communication that encourages you to purchase or use a product or service) if the Plan receives direct or indirect financial remuneration (payment) from the entity whose product or service is being marketed. The Plan generally will require an authorization form for the sale of Protected Health Information if the Plan receives direct or indirect financial remuneration (payment) from the entity to which the PHI is sold. The Plan does not intend to engage in fundraising activities.

## **Use or Disclosure of Your PHI Where Consent, Authorization or Opportunity to Object Is Not Required**

1. When **Required by Law**. As required by law, we may use and disclose your health information. For example, we may disclose medical information when required by a court order in a litigation proceeding such as a malpractice action.
2. When permitted **for purposes of public health activities**. This includes reporting product defects, permitting product recalls and conducting post-marketing surveillance. PHI may also be used or disclosed if you have been exposed to a communicable disease or are at risk of spreading a disease or condition, if authorized by law.
3. To a school about an individual who is a student or prospective student of the school if the Protected Health Information that is disclosed is limited to **proof of immunization**, the school is required by State or other law to have such proof of immunization prior to admitting the individual and the covered entity obtains and documents the agreements to this disclosure from either a parent, guardian or other person acting in loco parentis (in place of the parent) of the individual, if the individual is an unemancipated minor; or the individual, if the individual is an adult or emancipated.
4. When authorized by law to report information about **abuse, neglect or domestic violence** to public authorities if a reasonable belief exists that you may be a victim of abuse, neglect or domestic violence. In such case, the Plan will promptly inform you that such a disclosure has been or will be made unless that notice would cause a risk of serious harm. For the purpose of reporting child abuse or neglect, it is not necessary to inform the minor that such a disclosure has been or will be made. Disclosure may generally be made to the minor's parents or other representatives, although there may be circumstances under Federal or State law when the parents or other representatives may not be given access to the minor's PHI.
5. To a **public health oversight agency for health oversight activities authorized by law**. We may disclose your health information to health agencies during the course of audits, investigations, inspections, licensure and other proceedings related to oversight of the health care system.
6. When required for **Judicial and Administrative Proceedings**. For example, your PHI may be disclosed in response to a subpoena or discovery request, provided certain conditions are met, including that:
  - the requesting party must give the Plan satisfactory assurances a good faith attempt has been made to provide you with written notice, and
  - the notice provided sufficient information about the proceeding to permit you to raise an objection, and
  - no objections were raised or were resolved in favor of disclosure by the court or tribunal.
7. When required for **Law Enforcement purposes**. We may disclose your health information if the law enforcement official represents that the information is not intended to be used against the individual, the immediate law enforcement activity would be materially and adversely affected by waiting to obtain the individual's agreement and the Plan in its best judgment determines that disclosure is in the best interest of the individual. Law

enforcement purposes include identifying or locating a suspect, fugitive, material witness or missing person, complying with a court order or subpoena and other law enforcement purposes.

8. When required for **Law Enforcement Health Purposes**. For example, to report certain types of wounds.
9. **Coroners, Medical Examiners and Funeral Directors**. We may disclose your health information to coroners, medical examiners and funeral directors. For example, this may be necessary to identify a deceased person or determine the cause of death.
10. **Organ and Tissue Donation**. We may disclose your health information to organizations involved in procuring, banking or transplanting organs and tissues, as necessary.
11. **Public Safety**. We may disclose your health information to appropriate persons if the Plan in good faith believes the use or disclosure is necessary in order to prevent or lessen a serious and imminent threat to the health or safety of a particular person or the general public.
12. When required for **Specialized Government Functions**. We may disclose your health information for military authorities under certain circumstances, to authorized federal officials for lawful intelligence, counter-intelligence and other national security activities.
13. **Workers' Compensation**. We may disclose your health information to comply with workers' compensation or similar programs established by law.
14. For **Research**, subject to certain conditions.

### **When NMRHCA May Not Use or Disclose Your Health Information**

Except as described in this Notice of Privacy Practices, we will not disclose your health information without written authorization from you. If you do authorize us to use or disclose your health information for another purpose, you may revoke your authorization in writing at any time. If you revoke your authorization, we will no longer be able to use or disclose health information about you for the reasons covered by your written authorization, though we will be unable to take back any disclosures we have already made with your permission.

### **Use or Disclosure of Your PHI Where You Will Be Given an Opportunity to Agree or Disagree Before the Use or Release**

Disclosure of your PHI to family members, other relatives and your close personal friends without your written consent or authorization is allowed if:

- The information is directly relevant to the family or friend's involvement with your care or payment for that care, and
- You have either agreed to the disclosure or have been given an opportunity to object and have not objected.

Under this Plan your PHI will automatically be disclosed to appropriate internal departments at NMRHCA as outlined below. **If you disagree with this automatic disclosure by the Plan you may contact the Privacy Officer to request that such disclosure not occur without your written authorization.** In the event of your death while you are covered by this Plan, when the Plan is notified it will automatically communicate this information to NMRHCA's Customer Service Department.

### **Your Personal Representative**

You may exercise your rights to your Protected Health Information (PHI) by designating a person to act as your Personal Representative. Your Personal Representative will generally be required to produce evidence (proof) of the authority to act on your behalf before the Personal Representative will be given access to your PHI or be allowed to take any action for you.

Under this Plan, proof of such authority will include (1) a completed, signed and approved Appoint a Personal Representative form; (2) a notarized power of attorney for health care purposes; (3) a court-appointed conservator or guardian; or, (4) for a Spouse under this Plan, the absence of a Revoke a Personal Representative form on file with the Privacy Officer.

**This Plan WILL AUTOMATICALLY recognize your legal Spouse as your Personal Representative and vice versa, without you having to complete a form to Appoint a Personal Representative.** However, you may request that the Plan **not automatically** honor your legal Spouse as your Personal Representative by completing a form to Revoke a Personal Representative (copy attached to this notice or also available from the Privacy Officer).

**If you wish to revoke your Spouse as your Personal Representative, please complete the Revoke a Personal Representative form (attached or available from the Privacy Officer) and return it to the Privacy Officer and this will mean that this Plan will NOT automatically recognize your Spouse as your Personal Representative and vice versa.**

The recognition of your Spouse as your Personal Representative (and vice versa) is for the use and disclosure of PHI related to treatment, payment and health care operations purposes under this Plan and is not intended to expand such designation beyond what is necessary for this Plan to comply with HIPAA privacy regulations.

The Plan retains discretion to deny access to your PHI to a Personal Representative to provide protection to those vulnerable people who depend on others to exercise their rights under these rules and who may be subject to abuse or neglect.

Because HIPAA regulations give adults certain rights and generally children age 18 and older are adults, if you have dependent children age 18 and older covered under the Plan, and the child wants you, as the parent(s), to be able to access their Protected Health Information (PHI), that child will need to complete a form to Appoint a Personal Representative to designate you (the retiree) and/or your Spouse as their Personal Representatives.

The Plan will consider a parent, guardian, or other person acting in loco parentis as the Personal Representative of an unemancipated minor (a child generally under age 18) unless the applicable law requires otherwise. In loco parentis may be further defined by State law, but in general it refers to a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time. Spouses and unemancipated minors may, however, request that the Plan restrict PHI that goes to family members as described above under the section titled "Your Individual Privacy Rights."

You may obtain a form to Appoint a Personal Representative or Revoke a Personal Representative by contacting the Privacy Officer at their address listed on this Notice.

## **Statement of Your Individual Privacy Rights**

1. **Right to Request Restrictions.** You have the right to request restrictions on certain uses and disclosures of your health information. NMRHCA is not required to agree to the restrictions that you request if the Plan Administrator or Privacy Officer determines it to be unreasonable. If you would like to make a request for restrictions, you must submit your request in writing to the Privacy Officer at their address listed on the first page of this Notice.
2. **Right to Request Confidential Communications.** You have the right to receive your health information through a reasonable alternative means or at an alternative location (such as mailing PHI to a different address or allowing you to personally pick up the PHI that would otherwise be mailed), if you provide a written request to the Plan that the disclosure of PHI to your usual location could endanger you. If you believe you have this situation, you must submit your request in writing to the main office, 4308 Carlisle Blvd NE, Suite 104, Albuquerque, NM 87107.
3. **Right to Inspect and Copy.** You have the right to inspect and copy (in hard copy or electronic form) health information about you (except psychotherapy notes and information compiled in reasonable contemplation of an administrative action or proceeding) contained in a "designated record set," for as long as NMRHCA maintains the PHI. To inspect and copy such information, you must submit your request in writing to the Privacy Officer at their address listed on the first page of this Notice. If you request a copy of the information, we may charge you a reasonable fee to cover expenses associated with your request.
4. **Right to Request Amendment.** You have a right to request that NMRHCA amend your health information that you believe is incorrect and incomplete. We are not required to change your health information and if your request is denied, we will provide you with information about your denial and how you can disagree with the denial. To request an amendment, you must make your request in writing to the Privacy Officer at their address listed on the first page of this Notice. You must provide a reason for your request.

5. **Right to Accounting of Disclosures.** You have the right to receive a list or “accounting of disclosures” of your health information made by NMRHCA, except that we do not have to account for disclosures made for purposes of treatment, payment functions or health care operations, or disclosures made to you or authorized by you in writing. To request this accounting of disclosures, you must submit your request in writing to the Privacy Officer at their address listed on the first page of this Notice. Your request should specify a time period of up to six years and may not include dates before April 14, 2003. NMRHCA will provide one list per 12-month period free of charge; we may charge you a reasonable cost-based fee for additional lists.
6. **Right to Paper Copy of this Notice.** You have a right to receive a paper copy of this Notice of Privacy Practices at any time. This right applies even if you have agreed to receive the Notice electronically. To obtain a paper copy of this Notice, send your written request to the Privacy Officer at their address listed on the first page of this Notice.
7. **Breach Notification.** If a breach of your unsecured Protected Health Information occurs, the Plan will notify you.

If you would like to have a more detailed explanation of these rights or if you would like to exercise one or more of these rights contact the Privacy Officer at their address or telephone number listed on the first page of this Notice.

### **Disclosing Only the Minimum Necessary Protected Health Information**

When using or disclosing PHI or when requesting PHI from another covered entity, the Plan will make reasonable efforts not to use, disclose or request more than the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request, taking into consideration practical and technological limitations. However, the minimum necessary standard will not apply in the following situations:

- Disclosures to or requests by a health care provider for treatment,
- Uses or disclosures made to you,
- Disclosures made to the Secretary of the U.S. Department of Health and Human Services in accordance with their enforcement activities under HIPAA,
- Uses of disclosures required by law, and
- Uses of disclosures required for the Plan’s compliance with the HIPAA privacy regulations.

This Notice does not apply to information that has been de-identified. **De-identified information** is information that does not identify you and there is no reasonable basis to believe that the information can be used to identify you.

As described in the amended Plan document, the Plan may share PHI with the Plan Sponsor for limited administrative purposes, such as determining claims and appeals, performing quality assurance functions and auditing and monitoring the Plan. The Plan shares the minimum information necessary to accomplish these purposes.

In addition, the Plan may use or disclose “summary health information” to the Plan Sponsor for obtaining premium bids or modifying, amending or terminating the group health Plan. **Summary health information** means information that summarizes claims history, claims expenses or type of claims experienced by individuals for whom the Plan Sponsor has provided health benefits under a group health plan. Identifying information will be deleted from summary health information, in accordance with HIPAA.

### **Change to this Notice of Privacy Practices**

NMRHCA reserves the right to amend this Notice of Privacy Practices at any time in the future and to make the new Notice provisions effective for all health information that we maintain. We will promptly revise our Notice and distribute it to you whenever we make material changes to the Notice. Until such time, NMRHCA is required by law to comply with the current version of this Notice.

### **Complaints**

If you believe that your privacy rights have been violated, you may file a complaint with the Plan in care of the Plan’s Privacy Officer, at the address listed on the first page of this Notice. NMRHCA will not retaliate against you in any way for filing a complaint. All complaints to NMRHCA must be submitted in writing.

You may also file a complaint (within 180 days of the date you know or should have known about an act or omission) with the Secretary of the U.S. Department of Health and Human Services by contacting their nearest office as listed in your telephone directory or at this website (<http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html>) or this website:

<https://www.hhs.gov/hipaa/filing-a-complaint/what-to-expect/index.html> or contact the Privacy Officer (noted on the first page of this Notice) for more information about how to file a complaint.

### **If You Need More Information**

If you have any questions regarding this Notice or the subjects addressed in it, you may contact the Plan's Privacy Officer at the address listed on the first page of this Notice.