

HIPAA HEALTH INFORMATION PRIVACY AMENDMENT TO PLAN DOCUMENT

[insert full name of your company's dental plan]

WHEREAS, _____ (the "Plan Sponsor") wishes to exercise its right to amend certain provisions of the Plan effective _____,

NOW, THEREFORE, BE IT RESOLVED, effective _____, the Plan is hereby amended by adding the following new Section:

PROVISION OF PROTECTED HEALTH INFORMATION TO PLAN SPONSOR

1. **Permitted and Required Uses and Disclosure of Protected Health Information.** Unless otherwise permitted by law, and subject to obtaining written certification pursuant to paragraph 5 of this Section, the Plan may disclose Protected Health Information to the Plan Sponsor, provided the Plan Sponsor uses or discloses such Protected Health Information only for the following purposes:

- a. Performing Plan Administration Functions which the Plan Sponsor performs for the Plan.
- b. Obtaining premium bids from insurance companies or other health plans for providing insurance coverage under or on behalf of the group health plan; or
- c. Modifying, amending, or terminating the group health plan.

Notwithstanding the provisions of this Plan to the contrary, in no event shall the Plan Sponsor be permitted to use or disclose Protected Health Information in a manner that is inconsistent with 45 CFR §164.504(f).

2. **Information Regarding Participation.** Notwithstanding paragraph 1 of this Section, the Plan, or a health insurance issuer or HMO with respect to the Plan, may disclose to the Plan Sponsor information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan.

3. **Conditions of Disclosure.** Plan Sponsor agrees that with respect to any Protected Health Information disclosed to it by the Plan, an insurer or HMO, Plan Sponsor shall:

- a. Not use or further disclose the Protected Health Information other than as permitted or required by the Plan or as required by law.
- b. Ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from the Plan agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to Protected Health Information.
- c. Not use or disclose the Protected Health 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 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 45 CFR §164.524.

- f. Make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 CFR §164.526.
- g. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528.
- h. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with subpart E of 45 CFR §164.
- i. If feasible, return or destroy all Protected Health Information received from the Plan that the Plan Sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- j. Ensure that the adequate separation between Plan and Plan Sponsor, required in 45 CFR §504(f)(2)(iii), is satisfied.

4. **Certification of Plan Sponsor.** The Plan (or a health insurance issuer or HMO with respect to the Plan) shall disclose Protected Health Information to the Plan Sponsor only upon the receipt of a certification by the Plan Sponsor that the Plan has been amended to incorporate the provisions of 45 CFR §164.504(f)(2)(ii), and that the Plan Sponsor agrees to the conditions of disclosure set forth in Section 4 of this Section. The Plan shall not disclose and may not permit a health insurance issuer or HMO to disclose Protected Health Information to a Plan Sponsor as otherwise permitted herein unless the statement required by 45 CFR §164.520(b)(1)(iii)(C) is included in the appropriate notice.

5. **Adequate Separation Between Plan and Plan Sponsor.** The Plan Sponsor shall only allow

[insert classes of

employees or other persons the Plan Sponsor's control who will be given access to PHI] access to the Protected Health Information. These specified employees shall only have access to and use Protected Health Information to the extent necessary to perform the Plan Administration Functions that the Plan Sponsor performs for the Plan. In the event that any of these specified employees do not comply with the provisions of this Section, that employee shall be subject to disciplinary action by the Plan Sponsor for non-compliance pursuant to the Plan Sponsor's employee discipline and termination procedures.

6. **Permitted Uses and Disclosure of Summary Health Information.** Notwithstanding paragraph 1 of this Section, the Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose Summary Health Information to the Plan Sponsor, provided the Plan Sponsor requests the Summary Health Information for the purpose of:

- a. Obtaining premium bids from health plans for providing health insurance coverage under the Plan; or
- b. Modifying, amending, or terminating the Plan.

DEFINITIONS

Covered Entity means:

- (1) A Health Plan;
- (2) A health care clearinghouse; or
- (3) A health care provider who transmits any Health Information in electronic form in connection with a Transaction.

Health Information means:

Any information, whether oral or recorded in any form or medium, that:

- (1) Is created or received by a health care provider, Health Plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) 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.

Health Plan means:

Any individual or group plan that provides or pays the cost of medical care (as defined in Section 2791(a)(2) of the PHS Act, 42 U.S.C. §300gg-91(a)(2)).

Individually Identifiable Health Information means:

A subset of Health Information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, Health Plan, employer, or health care clearinghouse; and
- (2) 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; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Plan Administration Functions means:

Administration functions performed by the Plan Sponsor on behalf of the Plan, excluding functions performed by the Plan Sponsor in connection with any other benefit or benefit plan of the Plan Sponsor.

Protected Health Information means:

Individually Identifiable Health Information:

- (1) Except as provided in paragraph (2) of this definition, that is:
 - (i) Transmitted by electronic media;
 - (ii) Maintained in any media described in the definition of electronic media at 42 CFR §162.103; or
 - (iii) Transmitted or maintained in any other form or medium.
- (2) Protected Health Information excludes Individually Identifiable Health Information in:

- (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g;
- (ii) Records described at 20 U.S.C. §1232g(a)(4)(B)(iv); and
- (iii) Employment records held by a Covered Entity in its role as employer.

Summary Health Information means:

Information that (1) summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under a Health Plan; and (2) from which the information described at 42 CFR §164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR §164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit zip code.

Transaction means:

The transmission of information between two parties to carry out financial or administrative activities related to health care.

This Amendment is adopted by a duly authorized representative of the Plan Sponsor with the authority to amend the terms of the Plan, and may be relied upon by Plan officials, Covered Entities (as defined by the HIPAA Privacy Regulation), and business associates with respect to the Plan.

This Plan Amendment and accompanying definitions shall take effect the ____ day of _____ 200__, and has been adopted by:

Authorized Signature

Name

Title

Plan Sponsor

Date