

Health Insurance Portability and Accountability Act

The Board has determined that it meets the definition of a hybrid of covered entities¹ under the Health Insurance Portability and Accountability Act (HIPAA). As the ESD offers health-care provider programs and services that include electronic billing for the reimbursement of services under Oregon Medicaid programs, or contracts with another entity to provide such services, it is subject to HIPAA. In all electronic transactions involving student education records information, the ESD will adhere to the transaction requirements of HIPAA and the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA).

Additionally, because the ESD self-administers an Internal Revenue Service Section 125 plan it also meets the health plan definition under HIPAA. Accordingly, the ESD will safeguard the protected health information² of employees from use or disclosure that may violate standards and implementation specifications to the extent required by law.

As a covered entity, the ESD will meet the national electronic transaction standards and applicable requirements of federal law designed to ensure the security of protected health information of employees and student education record information created or received by the ESD.

In order to meet the notice requirements under the health-care provider provisions of the law, information will be provided to students and parents of their rights under FERPA in accordance with established procedures as set forth in Board policies JO - Education Records, JOA - Directory Information, JOB - Personally Identifiable Information and related administrative regulations.

The superintendent will designate an individual responsible for responding to HIPAA inquiries, complaints and for providing adequate notice of employee rights and ESD duties under the health plan provisions of the Act. Notice will include the privacy provisions of the law, and uses of employee protected health information and disclosures that may be made by the ESD.

¹A “covered entity” is an entity subject to HIPAA. These include those entities defined under the Act as a health plan, health-care clearinghouse, health care provider or a hybrid entity. A hybrid of covered entities is a single legal entity that is a covered entity and whose covered functions are not its primary function. Self-insured health plans and Internal Revenue Service Section 125 plans with 50 or more participants operated or maintained by public schools entities are covered health plans for HIPAA privacy rule purposes. Similarly, any provider of services, a provider of medical or health services as defined in section 1861 of the Act, 42 U.S.C. § 1395X(s)(5), and any person or organization who furnishes, bills or is paid for health care in the normal course as defined by 45 C.F.R § 160.103 is also subject to HIPAA requirements as a health care provider. ESD’s should review their programs and services with their legal counsel in determining HIPAA applicability.

²“Protected health information” means individually identifiable health information that is: (1) transmitted by electronic media; (2) maintained in electronic media; (3) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, and employment records held by a covered entity in its role as employer.

Training will be provided to all current staff and new employees determined by the ESD to have access to the protected health information of employees and student education records. Training will be provided within a reasonable period of time after the individual's hiring, and to those employees when their duties may be impacted by a change in the ESD's policy and/or procedures.

Individuals who believe their privacy rights have been violated may file a complaint in accordance with established ESD procedures. Employee complaints may also be filed directly with the U. S. Secretary of Health and Human Services. There shall be no retaliation by the ESD against any person who files a complaint or otherwise participates in an investigation or inquiry into an alleged violation of an individual's protected privacy rights. All complaints received will be promptly investigated and documented, including their final disposition.

The superintendent will ensure that satisfactory assurance has been obtained from any business associate³ performing HIPAA-covered activities or functions on behalf of the ESD that the protected health information it receives from the ESD will be protected. Such assurance will be in the form of a written agreement, or may be included as a part of the ESD's contract with the business associate.

Employees in violation of this policy or procedures established to safeguard student education records information and the protected health information of employees will be subject to discipline up to and including dismissal.

The superintendent is directed to ensure an assessment of ESD operations is conducted to determine the extent of the ESD's responsibilities as a covered entity under HIPAA and to develop internal controls and procedures necessary to implement this policy and meet the requirements of law. The procedures shall include provisions for record keeping, documentation of the ESD's compliance efforts and appropriate administrative, technical and physical safeguards to protect the privacy of student education records and employee protected health information and to ensure that any request is limited to information reasonably necessary to accomplish the purpose for which the request is made.

In the event of a change in the law that may impact this policy or established ESD procedures, the superintendent shall ensure appropriate revisions are recommended for Board approval, necessary changes are implemented and notification is made to staff and others, as appropriate.

END OF POLICY

Legal Reference(s):

[ORS 334.125\(7\)](#)

Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-d-8 (2006); 45 C.F.R. Parts 160, 164 (2006). Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2011); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2011).

³A "business associate" means a person who on behalf of such covered entity or of an organized health-care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs or assists in the performance of: (1) a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management and repricing; or (2) any other function or activity regulated by HIPAA.