

**OPERATING ENGINEERS
PUBLIC AND MISCELLANEOUS EMPLOYEES
HEALTH AND WELFARE TRUST FUND**

DISTRIBUTION OF PRIVACY NOTICE

Section 1: Purpose of This Notice and Effective Date

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.

Effective date. The effective date of this Notice is April 14, 2003.

This Notice is required by law. The Operating Engineers Public & Miscellaneous Employees Health and Welfare Trust Fund (the "Plan") is required by law, including the federal Health Insurance Portability and Accountability Act of 1996, known as HIPAA, to take reasonable steps to ensure the privacy of your personally identifiable health information and to inform you about:

1. The Plan's uses and disclosures of Protected Health Information (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 United States Department of Health and Human Services (HHS), and
5. The person or office you should contact for further information about the Plan's privacy practices.

This Notice applies to your health information held by the Operating Engineers Public & Miscellaneous Employees Health and Welfare Trust Fund and outside companies that help administer the Plan. You will receive a separate privacy notice if you have selected an insurer or HMO for your health plan.

Section 2: Your Protected Health Information

Definitions

• ***Protected Health Information (PHI) Defined***

The term "Protected Health Information" (PHI) includes all individually identifiable health information related to your past, present or future physical or mental health conditions, the provision of health care to you, or to past, present, or future payment for the provision of health care to you. PHI includes information transmitted, created or maintained by the Plan in oral, written, or electronic form.

• ***De-Identified PHI***

This Notice does not apply to information that has been de-identified. De-identified information is information that:

- Does not identify you, and
- With respect to which there is no reasonable basis to believe that the information can be used to identify you.

Your Personal Representative

You may exercise your rights through your Personal Representative. Your Personal Representative will be required to produce evidence of 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. Proof of such authority will be: (1) a completed, signed and approved Appointment of Personal Representative form; (2) a notarized power of attorney for health care purposes; (3) or a court-appointed conservator or guardian. You may obtain the Appointment of Personal Representative form by calling the Fund Office.

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.

The Plan will recognize certain individuals as Personal Representatives without you having to provide proof of authority as described above. The Fund will consider a parent or guardian as the Personal Representative of an unemancipated minor unless applicable law requires otherwise. A parent may act on an unemancipated minor's behalf, including requesting access to their PHI. All participants, including unemancipated minors, may request that the Plan restrict information that goes to family members by filling out a form to request restrictions on uses and disclosures of your PHI as described in Section 3 of this Notice.

You should also review the Plan's Policy and Procedure for the Recognition of Personal Representatives for a more complete description of the circumstances where the Plan will automatically consider an individual to be a Personal Representative.

Use or Disclosure of Your PHI For Which Consent, Authorization or Opportunity to Object Is Not Required

The Plan is required to give you access to certain PHI if you request it in order to allow you to inspect and/or copy it, or to provide an accounting to you, under certain circumstances as provided by law. (See Section 3 of this Notice).

The Plan is allowed under federal law to use and disclose your PHI without your consent or authorization, and without giving you an opportunity to object, under the following circumstances:

- ***As required by HHS.*** The Secretary of the United States 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 may use PHI in order to carry out treatment, payment or health care operations.
 - ***Treatment*** is the provision, management or coordination of health care and related services with health care providers or other covered entities. It also includes, but is not limited to, consultations and referrals between one or more of your providers.

For example, the Plan may disclose to a treating orthodontist the name of your treating dentist so that the orthodontist may ask for your dental x-rays from the treating dentist.

You Have the Right to Receive an Accounting of the Plan's PHI Disclosures

At your request, the Plan will also provide you with an accounting of certain disclosures of your PHI by the Plan. The Plan will not provide you with an accounting of disclosures related to treatment, payment, or health care operations, or disclosures made to you or authorized by you in writing. See the Plan's Accounting for Disclosure Policy for the complete list of disclosures for which an accounting is not required.

You should direct your request to the Privacy Officer specified above.

The Plan has 60 days to provide the accounting. The Plan is allowed an additional 30 days if the Plan gives you a written statement of the reasons for the delay and the date by which the accounting will be provided.

If you request more than one accounting within a 12-month period, the Plan will charge a reasonable, cost-based fee for each subsequent accounting.

Section 4: The Plan's Duties

Maintaining Your Privacy

The Plan is required by law to maintain the privacy of your PHI and to provide you with Notice of its legal duties and privacy practices.

Right to Amend

This Notice is effective beginning on April 14, 2003 and the Plan is required to comply with the terms of this Notice. However, the Plan reserves the right to change its privacy practices and to apply the changes to any PHI received or maintained by the Plan prior to that date. If a privacy practice is changed, a revised version of this Notice will be provided to you and to all past and present participants and beneficiaries for whom the Plan still maintains PHI via mail.

Any revised version of this Notice will be distributed within 60 days of the effective date of any material change to:

- The uses or disclosures of PHI,
- Your individual rights,
- The duties of the Plan, or
- Other privacy practices stated in 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,
- Uses or disclosures made pursuant to your written authorization,
- Disclosures made to the Secretary of the United States Department of Health and Human Services pursuant to its enforcement activities under HIPAA,
- Uses or disclosures required by law, and
- Uses or disclosures required for the Plan's compliance with the HIPAA privacy regulations.

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 summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a Plan Sponsor has provided health benefits under a group health plan. Identifying information will be deleted from summary health information, in accordance with HIPAA.

Section 5: Your Right to File a Complaint with the Plan or the HHS Secretary

If you believe that your privacy rights have been violated, you may file a complaint with the Plan in care of:

The Privacy Officer: Sue Padgett
Phone: (925) 288-4040 or (800) 893-2200
Fax: (925) 685-9615
Associated Third Party Administrators
2151 Salvio Street, Suite 201
Concord, CA 94520

You may also file a complaint with the Secretary of the U.S. Department of Health and Human Services ("HHS"). Please contact the nearest office of the Department of Health and Human Services, listed in your telephone directory, visit the HHS website at www.hhs.gov, or contact the Privacy Officer for more information on how to file a complaint.

The Plan will not retaliate against you for filing a complaint.

Section 6: If You Need More Information

If you have any questions regarding this Notice or the subjects addressed in it, you may contact the Privacy Officer, specified above, at the Fund Office.

Section 7: Conclusion

The federal Health Insurance Portability and Accountability Act, known as HIPAA, regulates PHI use and disclosure by the Plan. You may find these rules at *45 Code of Federal Regulations* Parts 160 and 164. This Notice attempts to summarize the regulations. The regulations will supersede this Notice if there is any discrepancy between the information in this Notice and the regulations.

- **Payment** includes, but is not limited to, actions to make eligibility or coverage determinations or undertake collection activities (including billing, claims management, subrogation, plan reimbursement, reviews for medical necessity and appropriateness of care and utilization review and preauthorizations).

For example, the Plan may tell a 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 operations, such as a physician that reviews medical claims, we will also disclose information to them. These third parties are known as “business associates.”

- **Health care operations** includes, but is not limited to, quality assessment and improvement, reviewing competence or qualifications of health care professionals, underwriting, 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, business planning and development, business management and general administrative activities.

For example, the Plan may use information about your claims to refer you to a disease management program or a well-pregnancy program, to project future benefit costs or to audit the accuracy of its claims processing functions.

- **Disclosure to the Plan's Trustees.** The Plan may also disclose PHI to the Board of Trustees of the Operating Engineers Public & Miscellaneous Employees Health and Welfare Trust Fund (the “Plan Sponsor”) for purposes related to, but not limited to, treatment, payment, and health care operations, and has amended the Plan Documents to permit this use and disclosure as required by federal law. For example, the Plan may disclose protected health information to the Board of Trustees of the Plan to allow them to decide an appeal of a benefit claim or for other reasons regarding the administration of this Plan, including review of a subrogation claim.
- **When required by applicable law.**
- **Public health purposes.** To an authorized public health authority if required by law or for public health and safety purposes. For example, the Plan may disclose your PHI when necessary to enable product recalls or repairs. The Plan may also use or disclose your PHI if you have been exposed to a communicable disease or are at risk of spreading a disease or condition, if authorized by law.
- **Domestic violence or abuse situations.** If a reasonable belief exists that you may be a victim of abuse, neglect or domestic violence, the Plan may report information about abuse, neglect or domestic violence to public authorities (1) when required by law; (2) if you agree to such disclosure; or (3) when the Plan is authorized by law and the disclosure is necessary to prevent serious harm to you or other potential victims. In such case, the Plan will promptly inform you or your Personal Representative that such a disclosure has been or will be made unless that would place you at a risk of serious harm or if the Plan would be informing a Personal Representative that it reasonably believes is responsible for the abuse. In the case of child abuse, it is not necessary for the Plan to inform the child of such disclosure.
- **Health oversight activities.** To a health oversight agency for oversight activities authorized by law. These activities include civil, administrative or criminal investigations, inspections, licensure or disciplinary actions (for example, to investigate complaints against health care providers); civil, administrative, or criminal proceedings or actions; and other activities necessary for appropriate oversight of government benefit programs (for example, to the Department of Labor).

- **Legal proceedings.** When required for judicial or administrative proceedings, as authorized by law. For example, your PHI may be disclosed in response to a subpoena or discovery request that is accompanied by a court order.
- **Law enforcement health and emergency purposes.** We may disclose PHI to law enforcement officials for the following purposes:
 - A. When required for law enforcement purposes (for example, to report certain types of wounds or other physical injuries);
 - B. Identifying or locating a suspect, fugitive, material witness or missing person;
 - C. Disclosing information about an individual who is or is suspected to be a victim of a crime. This only applies if the Plan is unable to obtain the individual's agreement because of incapacity or other emergency circumstances;
- **Determining cause of death and organ donation.** When required to be given to a coroner or medical examiner to identify a deceased person, determine a cause of death or other authorized duties. We may also disclose PHI for cadaveric organ, eye or tissue donation and transplantation purposes.
- **Funeral purposes.** When required to be given to funeral directors to carry out their duties with respect to the decedent, after or in reasonable anticipation of the individual's death.
- **Research.** For research, subject to certain conditions.
- **Health or safety threats.** When, consistent with applicable law and standards of ethical conduct, the Plan in good faith believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is to a person reasonably able to prevent or lessen the threat, including the target of the threat or it is necessary for law enforcement authorities to identify or apprehend an individual.
- **Workers' compensation programs.** The Plan may disclose PHI to your employer and others, when authorized by and to the extent necessary to comply with workers' compensation or other similar programs established by law.
- **Specialized government functions.** When required, to military authorities under certain circumstances, or to authorized federal officials for lawful intelligence, counter intelligence and other national security activities.

When the Disclosure of Your PHI Requires Your Written Authorization

Except as otherwise indicated in this Notice or as permitted by law, uses and disclosures will be made only with your written authorization subject to your right to revoke your authorization in writing.

- **Psychotherapy Notes:** Psychotherapy notes are separately filed notes in any medium about your conversations with your mental health professional during a private, group, joint, or family counseling session. Psychotherapy notes do not include medication prescription and monitoring, results of clinical tests, or any summary information about your mental health diagnosis, functional status, symptoms, prognosis, progress or treatment.

Although the Plan does not routinely obtain psychotherapy notes, it must generally obtain your written authorization before the Plan will use or disclose psychotherapy notes about you. However, the Plan may use and disclose such notes when needed by the Plan to defend itself against litigation filed by you.

- **If the Health Plan Provides Health Information to a Companion Pension Plan:** The Plan also requires your written authorization to share PHI with the pension plan.

Use or Disclosure of Your PHI To Relatives and Friends

Disclosure of your PHI to family members, other relatives, your close personal friends, and any other person you choose to identify is allowed under federal law if:

- The information is directly relevant to the family member, other relatives, or a close personal friend's involvement with your care or payment for that care, or
- The information is used or disclosed to notify, or assist in the notification of, a family member, Personal Representative, or another person responsible for your care, your location, general condition, or death.

If you are present for, or otherwise available prior to a use or disclosure permitted above, and you have the capacity to make health care decisions, the Plan will not use or disclose your PHI to your family and friends unless it:

- obtains your agreement,
- provides you with an opportunity to object to the use and disclosure of your PHI and you express no objections to such use and disclosure,
- or the Plan can reasonably infer from the circumstances that you do not object to such use and disclosure.

Other Uses or Disclosures

The Plan may contact you to provide you information about treatment alternatives or other health-related benefits and services that may be of interest to you.

Section 3: Your Individual Privacy Rights

You May Request Restrictions on PHI Uses and Disclosures

You may request the Plan to:

1. Restrict the uses and disclosures of your PHI to carry out treatment, payment or health care operations, or
2. Restrict uses and disclosures to family members, relatives, friends or other persons identified by you who are involved in your care.

The Plan may comply with your request at the discretion of the Plan Administrator or Privacy Official. The Plan is not required to agree to a requested restriction. If the Plan agrees to a restriction you have requested, it may terminate the restriction under certain circumstances. Make such requests in writing to:

The Privacy Officer
Phone: (925) 288-4040 or (800) 893-2200
Fax: (925) 685-9615
Associated Third Party Administrators
2151 Salvio Street, Suite 201
Concord, CA 94520

You May Request Confidential Communications

The Plan will accommodate any individual's reasonable request to receive communications of his or her PHI by alternative means or at alternative locations where the request includes a statement that disclosure could endanger the individual.

You or your Personal Representative will be required to complete a form to request restrictions on uses and disclosures of your PHI. Make such requests to the Privacy Officer specified above.

You May Inspect and Copy PHI

You have a right to inspect and obtain a copy of your PHI contained in a Designated Record Set (defined below) for as long as the Plan maintains the PHI.

Designated Record Set: includes your medical records and billing records that are maintained by or for a covered health care provider. Records include enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan or other information used in whole or in part by or for the covered entity to make decisions about you. Information used for quality control or peer review analyses and not used to make decisions about you is not included.

The Plan must provide the requested information within 30 days if the information is maintained on site or within 60 days if the information is maintained offsite. A single 30-day extension is allowed if the Plan is unable to comply with the deadline.

You or your Personal Representative will be required to complete a form to request access to the PHI in your Designated Record Set. A reasonable fee may be charged. Requests for access to PHI should be made to the Privacy Officer, specified above.

If access is denied, you or your Personal Representative will be provided with a written denial setting forth the basis for the denial, a description of how you may exercise your review rights and a description of how you may complain to the Plan and the United States Department of Health and Human Services.

You Have the Right to Amend Your PHI

You or your Personal Representative have the right to request that the Plan amend your PHI or a record about you in the Designated Record Set for as long as the PHI is maintained in the Designated Record Set subject to certain exceptions. See the Plan's Right to Amend Policy for a list of exceptions.

You or your Personal Representative should make your request to amend PHI to the Privacy Officer, specified above. You or your Personal Representative will be required to complete a form provided by the Plan to request amendment of your PHI.

The Plan has 60 days after receiving your request to act on it. The Plan is allowed a single 30-day extension if the Plan is unable to comply with the 60-day deadline. If the Plan denies your request in whole or part, the Plan must provide you with a written denial that explains the basis for the decision. You or your Personal Representative may then submit a written statement disagreeing with the denial and have that statement included with any future disclosures of that PHI. You may also file a complaint with the Plan and/or HHS. See Section 5, below.