

RESOLUTION #2015-01 CONFIDENTIALITY OF BENEFITS AND INSURANCE INFORMATION

(Supersedes Resolution #2013-01)

August 13, 2015

WHEREAS, pursuant to Utah Code Annotated §49-11-618 (2), "(a) All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action;" (b) All data in the possession of the office or divulged pursuant to board action shall be used for the sole purpose of carrying in to effect the provisions of this Title.";

WHEREAS, pursuant to Utah Code Annotated Title 49 (Title 49), Chapter 11, Part 11, the Retirement Office shall provide certain information for the public on its website;

WHEREAS, the Board desires to establish guidelines and standards, which comply with federal law, to regulate the release of information in the possession of the Retirement Office;

WHEREAS, the Board recognizes that the privacy and security provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and the Patient Protection and Affordable Care Act of 2010 ("PPACA") apply to certain information held by PEHP;

WHEREAS, this resolution is part of the Board's effort to comply with HIPAA and PPACA requirements; and

WHEREAS, the Board desires to amend and update Resolution 2013-01;

NOW, THEREFORE, BE IT RESOLVED that the Board adopts the following rules governing the access to information in the possession of the Retirement Office.

A. PEHP INFORMATION

1. A subscriber, subscriber's guardian or conservator, a subscriber's spouse, or a subscriber's spouse's guardian or conservator shall have access to the following PEHP records upon request:
 - a. Claims payment information (EOB information only¹) on anyone on the policy;
 - b. Enrollment information for anyone on the policy;²
 - c. Rates;
 - d. General obligations;
 - e. Benefits;
 - f. Master policies;
 - g. Copies of any forms anyone on the policy has provided or signed.
 - h. Pre-authorization of benefit forms;

1 "EOB information" for medical claims includes: date of service, type of service, provider, amount charged and amount paid. "EOB information" for pharmacy claims includes date of prescription, name of pharmacy, drug name and amount paid.

2 Dependents/Beneficiaries shall have the same access to enrollment information as a member except the beneficiary designation on a life insurance policy can only be given to subscribers.

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- i. Reasonable access to and copies of, all documents, records, and other information relied upon in making the benefit decision or information that is relevant to the Subscriber's claim for benefits in accordance with PPACA.
2. The Long Term Disability Program may send a copy of an independent medical examination report to the subscriber's treating physician upon receipt of a written request and release of liability waiver from the subscriber. This Program may also send a copy of an independent medical examination report to the subscriber's attorney upon receipt of proof of representation, notice of an appeal of benefits, a written request for such information, and a release of liability waiver from the attorney.
3. A subscriber's dependent age 18 or older, and persons with court ordered physical custody of minor dependents shall have access to the following PEHP records upon request:
 - a. Claims payment information (EOB information only) on the dependent only;
 - b. Enrollment information on the dependent only;
 - c. General obligations;
 - d. Benefits;
 - e. Master policies.
 - f. Reasonable access to and copies of, all documents, records, and other information relied upon in making the benefit decision or information that is relevant to the Subscriber's claim for benefits in accordance with PPACA.
4. A subscriber's dependent under the age of 18 shall not be entitled to any information or PEHP records.
5. Upon PEHP's receipt of a properly executed power of attorney, a person holding power of attorney for a subscriber, subscriber's spouse, or subscriber's dependent shall have the same access to information as the subscriber, the subscriber's spouse, or the subscriber's dependent or such access as further limited by the scope of the power of attorney.
6. Dependents who elect COBRA, conversion coverage, or Medicare supplemental coverage shall be "subscribers" for purposes of the Resolution.
7. A member's spouse shall have access to information regarding the amount of life insurance coverage the spouse maintains with PEHP, and, if applicable, to any life insurance information otherwise available to PEHP's dependents/beneficiaries.

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8. Covered Employers shall have access to:
 - a. Aggregate claims experience - (Covered Employers with over 100 employees may request detailed information so long as the type and way the information is provided does not violate federal or state law, such as HIPAA, or cause harm to PEHP in accordance with the policies of PEHP);
 - b. Benefit structure;
 - c. Premium information;
 - d. Information necessary to administer the programs and comply with the purposes of Title 49 (including underwriting and other standard reports).

9. At the Covered Employer's express written request, Consultants identified by Covered Employers shall have access to the information described in Section A. 8. to the minimum extent necessary in accordance with the Covered Employer's request, but only if:
 - a. the Covered Employer signs an agreement wherein the Covered Employer indemnifies the Retirement Office/PEHP from any liability arising out of the release of information to the Consultant, and requires that the Consultant sign a confidentiality agreement protecting the confidentiality of the information released, or
 - b. the Consultant signs an agreement with PEHP wherein the Retirement Office/PEHP is indemnified from any liability arising out of the release of information to the Consultant and the information is held confidential and protected from unauthorized disclosure. PEHP may limit the type and the Consultant's ability to use information, at the sole discretion of PEHP.

10. Business associates shall have access to information necessary for the administration of joint ventures to carry out the purposes of Utah Code Annotated § 49-20-105, but shall specifically be subject to Utah Code Annotated § 49-11-618(2) and 45 C.F.R. Parts 160 and 164.

11. Potential Covered Employers may request information from PEHP through a bid process. PEHP may comply with such a request so long as the requesting entity agrees to keep the information confidential, the request does not violate federal law (HIPAA), or the request does not cause harm to PEHP.

12. Upon receipt of a valid divorce decree, a subscriber's former spouse shall have access to:
 - a. Benefit information paid on their own behalf (EOB information only on request);
 - b. Benefit information paid on children in the legal custody of the former spouse;
 - c. Enrollment information on children in the legal custody of the former spouse;
 - d. Master Policies;
 - e. Benefits.

13. Information will be provided to governmental entities pursuant to applicable law.

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14. The following entities may be provided access to information necessary to accomplish the purposes stated below:
 - a. State Department of Health for the purpose of responding to surveys or request for aggregate information and semiannual aggregate reports on the CHIP program;
 - b. State Insurance Commission for the purpose of responding to complaints filed through the commission, and in compliance with Utah Code Annotated § 49-20-405.
 - c. State insurance fraud division to investigate claims of fraud.
 - d. Appropriate governmental entities for the purpose of maintaining, studying or evaluating the health of the general public.
 - e. Entities (including non-governmental entities) with which PEHP contracts for the purpose of promoting and/or providing health care education, counseling, or other assistance relating to health care conditions of covered individuals.
 - f. Medicaid Fraud Control Unit of the Utah Attorney General's Office to investigate Medicaid fraud.
 - g. Other governmental entities, including but not limited to, the Department of Professional Licensing, the State All Payor Database, or the Utah Health Insurance Network, when providing information to those entities would assist PEHP in carrying out the purposes of Title 49, and would not violate federal law (HIPAA).

15. Treating providers shall have access to:
 - a. A description of claims payment processes (EOB information);
 - b. Master policies or benefits;
 - c. Any information signed by the treating provider including contracts and fee schedules;
 - d. Claims history for case management, fraud, or Dr. Shopping investigations;
 - e. Any information necessary to insure proper medical treatment;
 - f. Physician practice profiles may be released to the individual physician;
 - g. Aggregate claims information may be released to provider networks;
 - h. Eligibility and enrollment information.

16. Reviewing providers and independent medical examiners are business associates of PEHP and shall have access to:
 - a. Medical records, including prior independent medical examinations;
 - b. Master policies;
 - c. Schedule of benefits;
 - d. Claims information;
 - e. Eligibility information;
 - f. Job description and other covered employer information.

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17. PEHP consulting actuaries, consultants, and vendors are business associates of PEHP and shall have access to any information reasonably necessary to accomplish the purpose for which the consulting actuary, consultant, or vendor was retained by PEHP. A confidentiality agreement is required, if not provided by contract.
18. PEHP independent auditors are business associates of PEHP and shall have access to information reasonably necessary to accomplish an audit. A confidentiality agreement is required, if not provided by contract.
19. Legislative auditors shall have access to information reasonably necessary to accomplish an audit. A confidentiality agreement is required, if not provided by contract.
20. The legislature and governor's office shall have access to aggregate information which may assist the legislature or governor's office in their oversight responsibilities in passing applicable legislation (contribution rates, premiums, funding, etc.).
21. The federal government shall have access to:
 - a. Information requested by an IRS levy;
 - b. Information necessary to conduct an audit;
 - c. Information which complies with federal law;
22. The following information is available to the public and shall be reasonably made available online:
 - a. PEHP Financial Statements;
 - b. Information provided pursuant to Title 49, Chapter 11, Part 11, including Administrative Expenses and Compensation;
 - c. Administrative Board meeting agendas and minutes;
 - d. Board Resolutions;
 - e. Publications designated for general release; and
 - f. General unprotected information available on the PEHP website.
23. Any person may request copies of the investment performance of assets held by PEHP.
24. A Covered Employer and an enrolled employee may have access to specific records (such as payroll and claims information) used in the administration of a 125 Flex Plan or similar plan administered by PEHP. An enrolled employee may provide a signed release to PEHP that would allow a spouse, dependent or legal guardian to have access to such information.
25. PEHP divisions or operations that are not considered "covered entities" under HIPAA may have access to the complete PEHP member file including medical records, claims records and case management records, if the division or operation has received a written authorization from the member acceptable to PEHP.

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26. In order to coordinate the administration of the Long Term Disability program, including payment and offset rights and upon receipt of an acceptable release, the Long Term Disability Program may provide information and documentation, including independent medical examination reports, to other disability insurers, worker's compensation insurers, the Social Security Administration and other similar entities. The Long Term Disability program may also share information regarding eligible employee coverage dates and pay information, upon a written approval by the eligible employee, to financial institutions and governmental agencies that provide social benefits to the eligible employee (food stamps and housing).
27. The filing of a Request for Board Action or written response to Notice of Board Action, when signed by the subscriber or their attorney, shall constitute a request for information and authorizes URS to release to the subscriber or their attorney all information required to be disclosed by the Utah Rules of Civil Procedure for discovery.

B. DISSEMINATION OF PEHP INFORMATION

1. PEHP information provided pursuant to this resolution through the mail shall only be sent to an address listed on the member's account information or to an address of another person eligible to receive information under this Resolution. A request to change the address must be made in writing or electronically through the PEHP website, by the member, the member's conservator, guardian, or attorney in fact which has been delegated such authority. A former spouse eligible to receive information of this Resolution may request a change to their address in writing or via the PEHP website.
2. PEHP information provided to a member pursuant to this resolution by facsimile or through e-mail shall only be provided if the Retirement Office has a written authorization requesting PEHP information in such format, or the member has requested information via e-mail after registering their e-mail address using the PEHP website.
3. PEHP information provided to a participating provider pursuant to this resolution may be provided through facsimile, mail, or properly encrypted email.
4. PEHP information provided pursuant to this resolution by telephone shall only be provided if the person is allowed by this Resolution and can demonstrate their identity through knowledge of personal information.
5. PEHP information provided pursuant to this resolution through the PEHP website and/or an interactive voice system shall only be permitted if the person has a valid user identification and password or PIN number.

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C. GENERAL PROVISIONS

1. The Executive Director shall:
 - a. have the authority to approve the fee schedule for each of the departments within the Retirement Office; and
 - b. designate a public information officer and establish policies to manage information requests.
2. The Executive Director will make all decisions not addressed in this resolution.
3. All information disclosed pursuant to this Resolution shall carry out the purposes of Title 49.
4. Unless a release of information is otherwise authorized by this Resolution, the Retirement Office shall only honor subpoenas from the hearing officer hired by the Board, district courts of the State of Utah, and Federal courts and agencies having proper jurisdiction.
5. No persons other than PEHP or Retirement Office employees who use the information to fulfill their duties are entitled to access medical records including independent medical examinations, and life insurance health examinations in the possession of PEHP or the Retirement Office, unless otherwise allowed by this Resolution.
6. Terms used in this resolution shall have the same meaning as in Title 49.
7. This Resolution supersedes all prior Resolutions that in any way address the dissemination of information or documentation from the PEHP.