ETHICS COMMITTEE MEETING
February 26, 2013

ITEM 8: Confidential Disclosure Waiver under AS 24.60.105(d)

Committee discussion at the January 16, 2013 meeting focused on the Federal law, Health Insurance Portability and Accountability Act of 1996 (HIPAA). It is important to note there are other areas of State law, Federal law, the U.S. and Alaska Constitution and a rule adopted by a trade or profession or federal law that may also apply. The term "confidential by law" will be used to provide clarity to the discussion.

Ms. Anderson met with Patty Krueger, staff to Rep Lynn, and Senator Cathy Giessel (both are in the health field) in early February to discuss the waiver form and areas related to HIPAA compliance. They provided insight into the requirements of HIPAA. Many of their suggestions related to the confidentiality aspects of HIPAA.

Some questions asked by Ms. Krueger and Senator Giessel:

- What about training for ethics staff on HIPAA privacy requirements?
- Release of a patient's identity under HIPAA requirements is very involved.
- If a health field employee completes the disclosure waiver form and checks federal law and HIPAA, because of the location of the provider, it may be obvious who is being treated even though the form may say only legislator or lobbyist, for instance. Suggested just listing all categories of persons applicable and not ask for a specific one.
- Consult with a HIPAA attorney for guidance.
- Alaska Care has a disclosure release form. (See attached.)
- If both the provider and the person receiving the service disclose, are the confidentiality provisions of HIPAA violated?

Keep in mind, the mission of the Ethics Committee is to develop a disclosure waiver form providing information consistent with the requirements of AS 24.60.070, close economic association, which does not contain information that is "confidential by law". The Ethics Committee's authority does not extend to interpreting other state or federal laws or rules or regulations. It is the responsibility of the person filing the disclosure to not violate any provisions of the applicable laws for their profession or trade.

The following points are important to the discussion:

- The nature of the service provided is not confidential by law.
- The identity of the person receiving the service is confidential by law unless certain conditions are met; such as the person receiving the service releasing the information or its release is authorized by a law or regulation.

At the January 16, 2013 committee meeting, members reviewed a draft disclosure waiver form. The committee determined additional information was needed. The intent was to have a revised disclosure form for the committee to consider at today's meeting.

The waiver disclosure form in the packet has been revised based on suggestions from the last committee meeting and other input as well. The disclosure form is now applicable to both parties: the person providing the service and the person receiving the service.

By developing a disclosure waiver form, the committee will provide consistency of information requested. Under AS 24.60.105(d), the committee may review the information to determine whether it is sufficient. In other words, does the disclosure meet the requirements of AS 24.60.070 and AS 24.60.105(d).

The committee's Rules of Procedure already provide for a review of disclosures and a request for additional information. Section 11(a) of the Committee's Rules of Procedure states the committee is authorized to request additional information for the purpose of clarification regarding a disclosure. Section 11(d) requires a review of confidential disclosures by the administrator and committee chair on a yearly basis. However the statutory reference is related to the gift section only. Section 11(d) needs to be updated.. [*Suggest the review be on a monthly basis. Add language about requesting clarification if needed and if the chair and administrator cannot determine if the disclosure meets the statutory requirements, refer the matter to the appropriate committee.]*

> Rules of Procedure:
> Section 11(a). FORMS: The committee will provide forms for each type of disclosure. The committee will accept faxed forms and faxed signatures. The committee is authorized to request additional information for the purpose of clarification.
>
> Section 11(d). REVIEW OF CONFIDENTIAL DISCLOSURES: The chair and the committee administrator shall review confidential disclosures on a yearly basis under AS 24.60.080(c)(6).

MATERIALS in the February 26 Packet

- Updated draft Waiver Disclosure form based on comments from the January 16 meeting.
- Alaska Care "Authorization for the Use and/or Disclosure of Protected Health Information (PHI)" form and fact sheet. Prepared by the Alaska Office for Civil rights.
- Summary of the HIPAA Privacy Rule

DISCUSSION BY COMMITTEE MEMBERS

1. Review the 'draft' disclosure form?
2. Determine who is required to file a request to refrain from making a disclosure?
    a. The person providing the service.
    b. The person receiving the service if covered by the Act.

C O N F I D E N T I A L (Updated Feb 2013)

REQUEST TO REFRAIN FROM MAKING A DISCLOSURE

Information deemed "confidential by law" is not required. Do not provide.

NAME OF PERSON completing the disclosure _____
Please Print

Check one: PROVIDING THE SERVICE: _____ RECEIVING THE SERVICE: _____

WORK ADDRESS: _____

WORK PHONE NUMBER _____

NAME OF LEGISLATIVE EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d) and AS 24.60.070

Person's Status with whom association exists: (public official, legislator, lobbyist, legislative employee under certain conditions) _____

Reason for request to refrain from making a **public** disclosure, please be specific:

Violation of: State Law _____

Federal Law _____

United States Constitution _____

State of Alaska Constitution _____

Rule adopted by a trade or profession that state or federal law requires the person to follow _____

Date of association: _____ One-time association ___ On-going association ___

Nature of Services (general description) _____

If providing the service, please provide the following information:

Provider License #: _____

Provider License Type: _____

Provider License Expiration Date: _____

The above is a true and accurate representation of my request to refrain from making a disclosure in accordance with AS 24.60.105(d).

The work performed and/or the compensation received does not create an ethical conflict of interest with the person's work for the legislature.

_____ _____

Signature Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115

Within 30 days of association and annually within the first 30 days of a regular session

EXPLANATION

AS 24.60.105(d). A person may submit a written request to refrain from making a disclosure if making the disclosure would violate state or federal law, including the U.S. Constitution, the Constitution of Alaska, or a rule adopted formally by a trade or profession that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification before determining whether it is sufficient. AS 24.60.070. A "close economic association" means a financial relationship. Disclosure of "close economic associations" must be in sufficient detail.

United States Department of Health & Human Services

OCR PRIVACY BRIEF

SUMMARY OF THE HIPAA PRIVACY RULE

OCR
OFFICE FOR CIVIL RIGHTS

HIPAA Compliance Assistance

SUMMARY OF
THE HIPAA PRIVACY RULE

Contents

SUMMARY OF
THE HIPAA PRIVACY RULE

Introduction

The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").[1] The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights ("OCR") has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in notes at the end of this document. To view the entire Rule, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa. In the event of a conflict between this summary and the Rule, the Rule governs.

Links to the OCR Guidance Document are provided throughout this paper. Provisions of the Rule referenced in this summary are cited in endnotes at the end of this document. To review the entire Rule itself, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa.

Statutory & Regulatory Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.

HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within

	three years of the passage of HIPAA. Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999. The Department received over 52,000 public comments. The final regulation, the Privacy Rule, was published December 28, 2000.[2] In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule. The Department received over 11,000 comments. The final modifications were published in final form on August 14, 2002.[3] A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E on the OCR website: http://www.hhs.gov/ocr/hipaa.
Who is Covered by the Privacy Rule	The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the "covered entities"). For help in determining whether you are covered, use the decision tool at: http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp. **Health Plans.** Individual and group plans that provide or pay the cost of medical care are covered entities.[4] Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations ("HMOs"), Medicare, Medicaid, Medicare+Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies). Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans. There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity. Two types of government-funded programs are not health plans: (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program; and (2) those programs whose principal activity is directly providing health care, such as a community health center,[5] or the making of grants to fund the direct provision of health care. Certain types of insurance entities are also not health plans, including entities providing only workers' compensation, automobile insurance, and property and casualty insurance. **Health Care Providers.** Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule.[6] Using electronic technology, such as email, does not mean a health care provider is a covered entity; the transmission must be in connection with a standard transaction. The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf. Health care providers include all "providers of services" (e.g., institutional providers such as hospitals) and "providers of medical or health services" (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

	Health Care Clearinghouses. *Health care clearinghouses* are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.[7] In most instances, health care clearinghouses will receive individually identifiable health information only when they are providing these processing services to a health plan or health care provider as a business associate. In such instances, only certain provisions of the Privacy Rule are applicable to the health care clearinghouse's uses and disclosures of protected health information.[8] Health care clearinghouses include billing services, repricing companies, community health management information systems, and value-added networks and switches if these entities perform clearinghouse functions.
Business Associates	**Business Associate Defined.** In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.[9] Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. However, persons or organizations are not considered business associates if their functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all. A covered entity can be the business associate of another covered entity. **Business Associate Contract.** When a covered entity uses a contractor or other non-workforce member to perform *"business associate"* services or activities, the Rule requires that the covered entity include certain protections for the information in a business associate agreement (in certain circumstances governmental entities may use alternative means to achieve the same protections). In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates.[10] Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Rule. Covered entities that have an existing written contract or agreement with business associates prior to October 15, 2002, which is not renewed or modified prior to April 14, 2003, are permitted to continue to operate under that contract until they renew the contract or April 14, 2004, whichever is first.[11] Sample business associate contract language is available on the OCR website at: http://www.hhs.gov/ocr/hipaa/contractprov.html. Also see OCR "Business Associate" Guidance.
What Information is Protected	**Protected Health Information.** The Privacy Rule protects all *"individually identifiable health information"* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information *"protected health information (PHI)."*[12]

	"Individually identifiable health information" is information, including demographic data, that relates to: • the individual's past, present or future physical or mental health or condition, • the provision of health care to the individual, or • the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.[13] Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number). The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. **De-Identified Health Information.** There are no restrictions on the use or disclosure of de-identified health information.[14] De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.[15]
General Principle for Uses and Disclosures	**Basic Principle.** A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.[16] **Required Disclosures.** A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.[17] See OCR "Government Access" Guidance.
Permitted Uses and Disclosures	**Permitted Uses and Disclosures.** A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and

(6) Limited Data Set for the purposes of research, public health or health care operations.[18] Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

(1) To the Individual. A covered entity may disclose protected health information to the individual who is the subject of the information.

(2) Treatment, Payment, Health Care Operations. A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.[19] A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See OCR "Treatment, Payment, Health Care Operations" Guidance.

> ***Treatment*** is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.[20]
>
> ***Payment*** encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual[21] and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
>
> ***Health care operations*** are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.[22]

Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.[23]

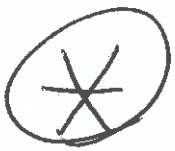
Obtaining "consent" (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.[24] The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

(3) Uses and Disclosures with Opportunity to Agree or Object. Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

Facility Directories. It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual's informal permission to list in its facility directory the individual's name, general condition, religious affiliation, and location in the provider's facility.[25] The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.

For Notification and Other Purposes. A covered entity also may rely on an individual's informal permission to disclose to the individual's family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person's involvement in the individual's care or payment for care. [26] This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

(4) Incidental Use and Disclosure. The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.[27] See OCR "Incidental Uses and Disclosures" Guidance.



(5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.[28] These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

Required by Law. Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by

statute, regulation, or court orders).[29]

Public Health Activities. Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OHSA), the Mine Safety and Health Administration (MHSA), or similar state law.[30] See OCR "Public Health" Guidance; CDC Public Health and HIPAA Guidance.

Victims of Abuse, Neglect or Domestic Violence. In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.[31]

Health Oversight Activities. Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.[32]

Judicial and Administrative Proceedings. Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.[33]

Law Enforcement Purposes. Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.[34]

Decedents. Covered entities may disclose protected health information to funeral directors as needed, and to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.[35]

Cadaveric Organ, Eye, or Tissue Donation. Covered entities may use or disclose protected health information to facilitate the donation and transplantation of cadaveric organs, eyes, and tissue.[36]

Research. "Research" is any systematic investigation designed to develop or contribute to generalizable knowledge.[37] The Privacy Rule permits a covered entity to use and disclose protected health information for research purposes, without an individual's authorization, provided the covered entity obtains either: (1) documentation that an alteration or waiver of individuals' authorization for the use or disclosure of protected health information about them for research purposes has been approved by an Institutional Review Board or Privacy Board; (2) representations from the researcher that the use or disclosure of the protected health information is solely to prepare a research protocol or for similar purpose preparatory to research, that the researcher will not remove any protected health information from the covered entity, and that protected health information for which access is sought is necessary for the research; or (3) representations from the researcher that the use or disclosure sought is solely for research on the protected health information of decedents, that the protected health information sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individuals about whom information is sought.[38] A covered entity also may use or disclose, without an individuals' authorization, a limited data set of protected health information for research purposes (see discussion below).[39] See OCR "Research" Guidance; NIH Protecting PHI in Research.

Serious Threat to Health or Safety. Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.[40]

Essential Government Functions. An authorization is not required to use or disclose protected health information for certain essential government functions. Such functions include: assuring proper execution of a military mission, conducting intelligence and national security activities that are authorized by law, providing protective services to the President, making medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates or employees in a correctional institution, and determining eligibility for or conducting enrollment in certain government benefit programs.[41]

	Workers' Compensation. Covered entities may disclose protected health information as authorized by, and to comply with, workers' compensation laws and other similar programs providing benefits for work-related injuries or illnesses.[42] See OCR "Workers' Compensation" Guidance. **(6) Limited Data Set.** A limited data set is protected health information from which certain specified direct identifiers of individuals and their relatives, household members, and employers have been removed.[43] A limited data set may be used and disclosed for research, health care operations, and public health purposes, provided the recipient enters into a data use agreement promising specified safeguards for the protected health information within the limited data set.
Authorized Uses and Disclosures 	**Authorization.** A covered entity must obtain the individual's written authorization for any use or disclosure of protected health information that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule.[44] A covered entity may not condition treatment, payment, enrollment, or benefits eligibility on an individual granting an authorization, except in limited circumstances.[45] An authorization must be written in specific terms. It may allow use and disclosure of protected health information by the covered entity seeking the authorization, or by a third party. Examples of disclosures that would require an individual's authorization include disclosures to a life insurer for coverage purposes, disclosures to an employer of the results of a pre-employment physical or lab test, or disclosures to a pharmaceutical firm for their own marketing purposes. All authorizations must be in plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, right to revoke in writing, and other data. The Privacy Rule contains transition provisions applicable to authorizations and other express legal permissions obtained prior to April 14, 2003.[46] **Psychotherapy Notes[47].** A covered entity must obtain an individual's authorization to use or disclose psychotherapy notes with the following exceptions[48]: • The covered entity who originated the notes may use them for treatment. • A covered entity may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine the covered entity's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner or as required by law. **Marketing.** Marketing is any communication about a product or service that encourages recipients to purchase or use the product or service.[49] The Privacy Rule carves out the following health-related activities from this definition of marketing: • Communications to describe health-related products or services, or payment

	for them, provided by or included in a benefit plan of the covered entity making the communication; • Communications about participating providers in a provider or health plan network, replacement of or enhancements to a health plan, and health-related products or services available only to a health plan's enrollees that add value to, but are not part of, the benefits plan; • Communications for treatment of the individual; and • Communications for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or care settings to the individual. Marketing also is an arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information, in exchange for direct or indirect remuneration, for the other entity to communicate about its own products or services encouraging the use or purchase of those products or services. A covered entity must obtain an authorization to use or disclose protected health information for marketing, except for face-to-face marketing communications between a covered entity and an individual, and for a covered entity's provision of promotional gifts of nominal value. No authorization is needed, however, to make a communication that falls within one of the exceptions to the marketing definition. An authorization for marketing that involves the covered entity's receipt of direct or indirect remuneration from a third party must reveal that fact. See OCR "Marketing" Guidance.
Limiting Uses and Disclosures to the Minimum Necessary	**Minimum Necessary.** A central aspect of the Privacy Rule is the principle of "minimum necessary" use and disclosure. A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.[50] A covered entity must develop and implement policies and procedures to reasonably limit uses and disclosures to the minimum necessary. When the minimum necessary standard applies to a use or disclosure, a covered entity may not use, disclose, or request the entire medical record for a particular purpose, unless it can specifically justify the whole record as the amount reasonably needed for the purpose. See OCR "Minimum Necessary" Guidance. The minimum necessary requirement is not imposed in any of the following circumstances: (a) disclosure to or a request by a health care provider for treatment; (b) disclosure to an individual who is the subject of the information, or the individual's personal representative; (c) use or disclosure made pursuant to an authorization; (d) disclosure to HHS for complaint investigation, compliance review or enforcement; (e) use or disclosure that is required by law; or (f) use or disclosure required for compliance with the HIPAA Transactions Rule or other HIPAA Administrative Simplification Rules. **Access and Uses.** For internal uses, a covered entity must develop and implement policies and procedures that restrict access and uses of protected health information based on the specific roles of the members of their workforce. These policies and procedures must identify the persons, or classes of persons, in the workforce who need access to protected health information to carry out their duties, the categories of

	protected health information to which access is needed, and any conditions under which they need the information to do their jobs. **Disclosures and Requests for Disclosures.** Covered entities must establish and implement policies and procedures (which may be standard protocols) for *routine, recurring disclosures, or requests for disclosures,* that limits the protected health information disclosed to that which is the minimum amount reasonably necessary to achieve the purpose of the disclosure. Individual review of each disclosure is not required. For non-routine, non-recurring disclosures, or requests for disclosures that it makes, covered entities must develop criteria designed to limit disclosures to the information reasonably necessary to accomplish the purpose of the disclosure and review each of these requests individually in accordance with the established criteria. **Reasonable Reliance.** If another covered entity makes a request for protected health information, a covered entity may rely, if reasonable under the circumstances, on the request as complying with this minimum necessary standard. Similarly, a covered entity may rely upon requests as being the minimum necessary protected health information from: (a) a public official, (b) a professional (such as an attorney or accountant) who is the covered entity's business associate, seeking the information to provide services to or for the covered entity; or (c) a researcher who provides the documentation or representation required by the Privacy Rule for research.
Notice and Other Individual Rights	**Privacy Practices Notice.** Each covered entity, with certain exceptions, must provide a notice of its privacy practices.[51] The Privacy Rule requires that the notice contain certain elements. The notice must describe the ways in which the covered entity may use and disclose protected health information. The notice must state the covered entity's duties to protect privacy, provide a notice of privacy practices, and abide by the terms of the current notice. The notice must describe individuals' rights, including the right to complain to HHS and to the covered entity if they believe their privacy rights have been violated. The notice must include a point of contact for further information and for making complaints to the covered entity. Covered entities must act in accordance with their notices. The Rule also contains specific distribution requirements for direct treatment providers, all other health care providers, and health plans. See OCR "Notice" Guidance. • **Notice Distribution.** A covered health care provider with a *direct treatment relationship* with individuals must deliver a privacy practices notice to patients starting April 14, 2003 as follows: o Not later than the first service encounter by personal delivery (for patient visits), by automatic and contemporaneous electronic response (for electronic service delivery), and by prompt mailing (for telephonic service delivery); o By posting the notice at each service delivery site in a clear and prominent place where people seeking service may reasonably be expected to be able to read the notice; and o In emergency treatment situations, the provider must furnish its notice as soon as practicable after the emergency abates.

Covered entities, whether *direct treatment providers* or *indirect treatment providers* (such as laboratories) or *health plans* must supply notice to anyone on request.[52] A covered entity must also make its notice electronically available on any web site it maintains for customer service or benefits information.

The covered entities in an *organized health care arrangement* may use a joint privacy practices notice, as long as each agrees to abide by the notice content with respect to the protected health information created or received in connection with participation in the arrangement.[53] Distribution of a joint notice by any covered entity participating in the organized health care arrangement at the first point that an OHCA member has an obligation to provide notice satisfies the distribution obligation of the other participants in the organized health care arrangement.

A health plan must distribute its privacy practices notice to each of its enrollees by its Privacy Rule compliance date. Thereafter, the health plan must give its notice to each new enrollee at enrollment, and send a reminder to every enrollee at least once every three years that the notice is available upon request. A health plan satisfies its distribution obligation by furnishing the notice to the "named insured," that is, the subscriber for coverage that also applies to spouses and dependents.

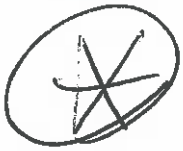
- **Acknowledgement of Notice Receipt.** A covered health care provider with a direct treatment relationship with individuals must make a good faith effort to obtain written acknowledgement from patients of receipt of the privacy practices notice.[54] The Privacy Rule does not prescribe any particular content for the acknowledgement. The provider must document the reason for any failure to obtain the patient's written acknowledgement. The provider is relieved of the need to request acknowledgement in an emergency treatment situation.

Access. Except in certain circumstances, individuals have the right to review and obtain a copy of their protected health information in a covered entity's *designated record set*.[55] The "designated record set" is that group of records maintained by or for a covered entity that is used, in whole or part, to make decisions about individuals, or that is a provider's medical and billing records about individuals or a health plan's enrollment, payment, claims adjudication, and case or medical management record systems.[56] The Rule excepts from the right of access the following protected health information: psychotherapy notes, information compiled for legal proceedings, laboratory results to which the Clinical Laboratory Improvement Act (CLIA) prohibits access, or information held by certain research laboratories. For information included within the right of access, covered entities may deny an individual access in certain specified situations, such as when a health care professional believes access could cause harm to the individual or another. In such situations, the individual must be given the right to have such denials reviewed by a licensed health care professional for a second opinion.[57] Covered entities may impose reasonable, cost-based fees for the cost of copying and postage.

Amendment. The Rule gives individuals the right to have covered entities amend their protected health information in a designated record set when that information is

	inaccurate or incomplete.[58] If a covered entity accepts an amendment request, it must make reasonable efforts to provide the amendment to persons that the individual has identified as needing it, and to persons that the covered entity knows might rely on the information to the individual's detriment.[59] If the request is denied, covered entities must provide the individual with a written denial and allow the individual to submit a statement of disagreement for inclusion in the record. The Rule specifies processes for requesting and responding to a request for amendment. A covered entity must amend protected health information in its designated record set upon receipt of notice to amend from another covered entity. **Disclosure Accounting.** Individuals have a right to an accounting of the disclosures of their protected health information by a covered entity or the covered entity's business associates.[60] The maximum disclosure accounting period is the six years immediately preceding the accounting request, except a covered entity is not obligated to account for any disclosure made before its Privacy Rule compliance date. The Privacy Rule does not require accounting for disclosures: (a) for treatment, payment, or health care operations; (b) to the individual or the individual's personal representative; (c) for notification of or to persons involved in an individual's health care or payment for health care, for disaster relief, or for facility directories; (d) pursuant to an authorization; (e) of a limited data set; (f) for national security or intelligence purposes; (g) to correctional institutions or law enforcement officials for certain purposes regarding inmates or individuals in lawful custody; or (h) incident to otherwise permitted or required uses or disclosures. Accounting for disclosures to health oversight agencies and law enforcement officials must be temporarily suspended on their written representation that an accounting would likely impede their activities. **Restriction Request.** Individuals have the right to request that a covered entity restrict use or disclosure of protected health information for treatment, payment or health care operations, disclosure to persons involved in the individual's health care or payment for health care, or disclosure to notify family members or others about the individual's general condition, location, or death.[61] A covered entity is under no obligation to agree to requests for restrictions. A covered entity that does agree must comply with the agreed restrictions, except for purposes of treating the individual in a medical emergency.[62] **Confidential Communications Requirements.** Health plans and covered health care providers must permit individuals to request an alternative means or location for receiving communications of protected health information by means other than those that the covered entity typically employs.[63] For example, an individual may request that the provider communicate with the individual through a designated address or phone number. Similarly, an individual may request that the provider send communications in a closed envelope rather than a post card. Health plans must accommodate reasonable requests if the individual indicates that the disclosure of all or part of the protected health information could endanger the individual. The health plan may not question the individual's statement of endangerment. Any covered entity may condition compliance with a confidential communication request on the individual specifying an alternative address or method of contact and explaining how any payment will be handled.

Administrative Requirements



HHS recognizes that covered entities range from the smallest provider to the largest, multi-state health plan. Therefore the flexibility and scalability of the Rule are intended to allow covered entities to analyze their own needs and implement solutions appropriate for their own environment. What is appropriate for a particular covered entity will depend on the nature of the covered entity's business, as well as the covered entity's size and resources.

Privacy Policies and Procedures. A covered entity must develop and implement written privacy policies and procedures that are consistent with the Privacy Rule.[64]

Privacy Personnel. A covered entity must designate a privacy official responsible for developing and implementing its privacy policies and procedures, and a contact person or contact office responsible for receiving complaints and providing individuals with information on the covered entity's privacy practices.[65]

Workforce Training and Management. Workforce members include employees, volunteers, trainees, and may also include other persons whose conduct is under the direct control of the entity (whether or not they are paid by the entity).[66] A covered entity must train all workforce members on its privacy policies and procedures, as necessary and appropriate for them to carry out their functions.[67] A covered entity must have and apply appropriate sanctions against workforce members who violate its privacy policies and procedures or the Privacy Rule.[68]

Mitigation. A covered entity must mitigate, to the extent practicable, any harmful effect it learns was caused by use or disclosure of protected health information by its workforce or its business associates in violation of its privacy policies and procedures or the Privacy Rule.[69]

Data Safeguards. A covered entity must maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent intentional or unintentional use or disclosure of protected health information in violation of the Privacy Rule and to limit its incidental use and disclosure pursuant to otherwise permitted or required use or disclosure.[70] For example, such safeguards might include shredding documents containing protected health information before discarding them, securing medical records with lock and key or pass code, and limiting access to keys or pass codes. See OCR "Incidental Uses and Disclosures" Guidance.

Complaints. A covered entity must have procedures for individuals to complain about its compliance with its privacy policies and procedures and the Privacy Rule.[71] The covered entity must explain those procedures in its privacy practices notice.[72]

Among other things, the covered entity must identify to whom individuals can submit complaints to at the covered entity and advise that complaints also can be submitted to the Secretary of HHS.

Retaliation and Waiver. A covered entity may not retaliate against a person for exercising rights provided by the Privacy Rule, for assisting in an investigation by HHS or another appropriate authority, or for opposing an act or practice that the person believes in good faith violates the Privacy Rule.[73] A covered entity may not

	require an individual to waive any right under the Privacy Rule as a condition for obtaining treatment, payment, and enrollment or benefits eligibility.[74] **Documentation and Record Retention.** A covered entity must maintain, until six years after the later of the date of their creation or last effective date, its privacy policies and procedures, its privacy practices notices, disposition of complaints, and other actions, activities, and designations that the Privacy Rule requires to be documented.[75] **Fully-Insured Group Health Plan Exception.** The only administrative obligations with which a fully-insured group health plan that has no more than enrollment data and summary health information is required to comply are the (1) ban on retaliatory acts and waiver of individual rights, and (2) documentation requirements with respect to plan documents if such documents are amended to provide for the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO that services the group health plan.[76]
Organizational Options	The Rule contains provisions that address a variety of organizational issues that may affect the operation of the privacy protections. **Hybrid Entity.** The Privacy Rule permits a covered entity that is a single legal entity and that conducts both covered and non-covered functions to elect to be a "hybrid entity."[77] (The activities that make a person or organization a covered entity are its "covered functions."[78]) To be a hybrid entity, the covered entity must designate in writing its operations that perform covered functions as one or more "health care components." After making this designation, most of the requirements of the Privacy Rule will apply only to the health care components. A covered entity that does not make this designation is subject in its entirety to the Privacy Rule. **Affiliated Covered Entity.** Legally separate covered entities that are affiliated by common ownership or control may designate themselves (including their health care components) as a single covered entity for Privacy Rule compliance.[79] The designation must be in writing. An affiliated covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions. **Organized Health Care Arrangement.** The Privacy Rule identifies relationships in which participating covered entities share protected health information to manage and benefit their common enterprise as "organized health care arrangements."[80] Covered entities in an organized health care arrangement can share protected health information with each other for the arrangement's joint health care operations.[81] **Covered Entities With Multiple Covered Functions.** A covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions.[82] The covered entity may not use or disclose the protected health information of an individual who receives services from one covered function (e.g., health care provider) for another covered function (e.g., health plan) if the individual is not involved with the other function.

	Group Health Plan disclosures to Plan Sponsors. A group health plan and the health insurer or HMO offered by the plan may disclose the following protected health information to the "plan sponsor"—the employer, union, or other employee organization that sponsors and maintains the group health plan[83]: • Enrollment or disenrollment information with respect to the group health plan or a health insurer or HMO offered by the plan. • If requested by the plan sponsor, summary health information for the plan sponsor to use to obtain premium bids for providing health insurance coverage through the group health plan, or to modify, amend, or terminate the group health plan. "Summary health information" is information that summarizes claims history, claims expenses, or types of claims experience of the individuals for whom the plan sponsor has provided health benefits through the group health plan, and that is stripped of all individual identifiers other than five digit zip code (though it need not qualify as de-identified protected health information). • Protected health information of the group health plan's enrollees for the plan sponsor to perform plan administration functions. The plan must receive certification from the plan sponsor that the group health plan document has been amended to impose restrictions on the plan sponsor's use and disclosure of the protected health information. These restrictions must include the representation that the plan sponsor will not use or disclose the protected health information for any employment-related action or decision or in connection with any other benefit plan.
Other Provisions: Personal Representatives and Minors	**Personal Representatives.** The Privacy Rule requires a covered entity to treat a *"personal representative"* the same as the individual, with respect to uses and disclosures of the individual's protected health information, as well as the individual's rights under the Rule.[84] A personal representative is a person legally authorized to make health care decisions on an individual's behalf or to act for a deceased individual or the estate. The Privacy Rule permits an exception when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual. **Special case: Minors.** In most cases, parents are the personal representatives for their minor children. Therefore, in most cases, parents can exercise individual rights, such as access to the medical record, on behalf of their minor children. In certain exceptional cases, the parent is not considered the personal representative. In these situations, the Privacy Rule defers to State and other law to determine the rights of parents to access and control the protected health information of their minor children. If State and other law is silent concerning parental access to the minor's protected health information, a covered entity has discretion to provide or deny a parent access to the minor's health information, provided the decision is made by a licensed health care professional in the exercise of professional judgment. See OCR "Personal Representatives" Guidance.

State Law 	**Preemption.** In general, State laws that are contrary to the Privacy Rule are preempted by the federal requirements, which means that the federal requirements will apply.[85] "Contrary" means that it would be impossible for a covered entity to comply with both the State and federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.[86] The Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that (1) relate to the privacy of individually identifiable health information and provide greater privacy protections or privacy rights with respect to such information, (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) require certain health plan reporting, such as for management or financial audits. **Exception Determination.** In addition, preemption of a contrary State law will not occur if HHS determines, in response to a request from a State or other entity or person, that the State law: • Is necessary to prevent fraud and abuse related to the provision of or payment for health care, • Is necessary to ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation, • Is necessary for State reporting on health care delivery or costs, • Is necessary for purposes of serving a compelling public health, safety, or welfare need, and, if a Privacy Rule provision is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or • Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.
Enforcement and Penalties for Noncompliance	**Compliance.** Consistent with the principles for achieving compliance provided in the Rule, HHS will seek the cooperation of covered entities and may provide technical assistance to help them comply voluntarily with the Rule.[87] The Rule provides processes for persons to file complaints with HHS, describes the responsibilities of covered entities to provide records and compliance reports and to cooperate with, and permit access to information for, investigations and compliance reviews. **Civil Money Penalties.** HHS may impose civil money penalties on a covered entity of $100 per failure to comply with a Privacy Rule requirement.[88] That penalty may not exceed $25,000 per year for multiple violations of the identical Privacy Rule requirement in a calendar year. HHS may not impose a civil money penalty under specific circumstances, such as when a violation is due to reasonable cause and did not involve willful neglect and the covered entity corrected the violation within 30 days of when it knew or should have known of the violation.

	Criminal Penalties. A person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of $50,000 and up to one-year imprisonment.[89] The criminal penalties increase to $100,000 and up to five years imprisonment if the wrongful conduct involves false pretenses, and to $250,000 and up to ten years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm. Criminal sanctions will be enforced by the Department of Justice.
Compliance Dates	**Compliance Schedule.** All covered entities, except "small health plans," must be compliant with the Privacy Rule by April 14, 2003.[90] Small health plans, however, have until April 14, 2004 to comply. **Small Health Plans.** A health plan with annual receipts of not more than $5 million is a small health plan.[91] Health plans that file certain federal tax returns and report receipts on those returns should use the guidance provided by the Small Business Administration at 13 Code of Federal Regulations (CFR) 121.104 to calculate annual receipts. Health plans that do not report receipts to the Internal Revenue Service (IRS), for example, group health plans regulated by the Employee Retirement Income Security Act 1974 (ERISA) that are exempt from filing income tax returns, should use proxy measures to determine their annual receipts.[92] See What constitutes a small health plan?
Copies of the Rule & Related Materials	The entire Privacy Rule, as well as guidance and additional materials, may be found on our website, http://www.hhs.gov/ocr/hipaa.

Alaska Care

RESTRICTIONS ON GOVERNMENT ACCESS TO HEALTH INFORMATION

[45 CFR Part 160, Subpart C; 164.512(f)]

Background

Under the HIPAA Privacy Rule, government-operated health plans and health care providers must meet substantially the same requirements as private ones for protecting the privacy of individual identifiable health information. For instance, government-run health plans, such as Medicare and Medicaid plans, must take virtually the same steps to protect the claims and health information that they receive from beneficiaries as private insurance plans or health maintenance organizations (HMO). In addition, all Federal agencies must also meet the requirements of the Privacy Act of 1974, which restricts what information about individual citizens – including any personal health information – can be shared with other agencies and with the public.

The only new authority for government involves enforcement of the protections in the Privacy Rule itself. To ensure that covered entities protect patients' privacy as required, the Rule requires that health plans, hospitals, and other covered entities cooperate with efforts by the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) to investigate complaints or otherwise ensure compliance.

Frequently Asked Questions

To see Privacy Rule FAQs, click the desired link below:

FAQs on Disclosures for Rule Enforcement

FAQs on Disclosures for Law Enforcement Purposes

FAQs on Privacy Rule: General Topics

FAQs on ALL Privacy Rule Topics

(You can also go to http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php, then select "Privacy of Health Information/HIPAA" from the Category drop down list and click the Search button.)

ALASKACARE Health Plans	**Authorization for the Use and/or Disclosure of Protected Health Information (PHI)**	**FOR OFFICE USE ONLY**
Toll-Free: (800) 821-2251 **alaska.gov/drb**	*Division of Retirement and Benefits* *PO Box 110203* *Juneau, Alaska 99811-0203*	**Juneau: 465-8600** *TDD: (907) 465-2805* *Fax: (907) 465-4668*

Member Information

Last Name		First Name	Middle Initial
Health Plan ID Number	Birthday (MM/DD/YYYY)	Daytime Telephone number (include area code) ( )	

What is the patient's relationship to the member? ❒ Self ❒ Spouse ❒ Child ❒ Other:

Patient Information

Last Name		First Name	Middle Initial
Health Plan ID Number	Birthday (MM/DD/YYYY)	Daytime Telephone number (include area code) ( )	

Authorized Person(s) or Entity(s) to Whom AlaskaCare may release your PHI

Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip
Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip
Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip
Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip
Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip
Person or entity authorized to receive PHI	Daytime Telephone number (include area code) ( )
Street Address	City, State and Zip

Plan Name	Nature of PHI
❒ Medical	❒ Benefits, enrollment, premiums and eligibility
❒ Dental	❒ Claim
❒ Vision	❒ Health Appeal
❒ Health Flexible Spending Account	❒ Medical/Treatment/Diagnostic Records
❒ Other: (please specify)	❒ Other:

Reason for Use and/or Disclosure

The health information described above in Nature of PHI may be used only for the purpose(s) indicated here.

❒ To resolve a benefits claim for the patient listed above for:
Date(s) of service:

Name of Provider(s):

❒ To resolve an issue regarding the enrollment and coverage of:

- ❒ Myself
- ❒ My family member(s):

❒ To obtain claims or other information in order to assist me or a family member in dealing with another insurance company.

❒ At the request of the individual (check this box if individual does not want to disclose reason for request).

❒ Other:

IMPORTANT: Your signature below means that you understand and agree to the following:

- This authorization expires on:
  (An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure)
- The phrase "medical records" as used in Nature of PHI includes but is not limited to physical health, mental health, treatment for alcohol and/or drug abuse, sexually transmitted disease, acquired immunodeficiency syndrome (AIDS) or infection with Human Immunodeficiency Virus (HIV).
- I understand that, if the person or entity I have authorized on this form to receive my PHI is not required to comply with federal privacy protection regulations, my health information may be further disclosed and is no longer protected.
- I understand that I may revoke this authorization at any time by notifying the Plan in writing at the address on the front of this form. I also understand that my revocation cannot affect any use and/or disclosure of protected health information based on this authorization if it occurred before the Plan received my revocation letter.
- I understand that my eligibility for benefits and payment for services will not be affected if I do not sign this form. I also understand that without my signature, my request to release the information described above to a third party will not be honored.
- You should retain a copy of this form for your records. You may also request a copy by writing to the address listed on the front of this form.
- If we receive requests for copies of claims and other information from the individual or company you have authorized to receive your confidential information, we may charge a reasonable fee (except where prohibited by law) for copying and mailing costs.

I authorize AlaskaCare to release my PHI as indicated on this form to the person(s) or entity(s) identified.

Signature of **Patient** or **Legal Representative of Patient**	Date
Print Name	Daytime Telephone number (include area code) ( )

Must be signed by the person whose records are to be released, unless that person is under the age of 18 and is not emancipated.

If not the Patient, describe relationship to the Patient:

❒ Natural or Adoptive Parent of Unemancipated Minor Child

❒ Other Legal Representative. (You must furnish a copy of the healthcare power of attorney or other legal document(s) designating you as the legal representative.)

❒ Relationship to the patient, including authority for status as legal representative

Item 8
PT 2
(Yellow)

ETHICS COMMITTEE MEETING
January 16, 2013

ITEM 9: Disclosure Waiver under AS 24.60.105(d)

This section of the Legislative Ethics Act was added with the passage of SB 89 in 2012 and became effective on August 22, 2012. The provision allows a person subject to the Act to request a waiver if making a disclosure would violate:

- State law
- Federal law
- United States Constitution
- State of Alaska Constitution
- Rule adopted formally by a trade or profession that state or federal law required the person to follow

The person shall provide to the Ethics Committee justification in writing. The committee may review the written justification to determine whether it is sufficient.

> AS 24.60.105 **(d)** A person may submit a written request to refrain from making a disclosure that is required by this chapter if making the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification from the person making the request. At the request of the committee or a person authorized to act on behalf of the committee, a person who seeks to refrain from making a disclosure under this subsection shall provide the committee with justification in writing, and the committee may review the written justification to determine whether it is sufficient.

In the best interest of both the person subject to the Act and the committee, a form would be the most convenient method of requesting the waiver because it would contain all the information required by the Ethics Committee to make a determination a waiver is permitted.

MATERIALS IN THE PACKET

- Draft Waiver Disclosure form prepared by the Ethics Office – January 16, 2013.
- Legal opinion from Dan Wayne, LAA Legal Counsel, dated November 5, 2012.
    - Note: Page 4, second sentence states: "Even though AS 24.60.060 would prohibit legislators or legislative employees from making unauthorized disclosure of confidential information acquired this way, it may not apply to public members of the committee." Mr. Wayne added a footnote here and referenced statutory language in AS 24.60.060(a). However, with the passage of SB 89 in

2012, effective August 22, 2012, public members of the committee are now covered by the confidentiality provisions of AS 24.60.060(a).

- Unofficial summary of excerpted Legislative Committee testimony on this subject.
- AO 09-02, Close Economic Association, Medical Service.
- August 2012 THE ADVISOR newsletter article on AS 24.60.105(d).
- Close Economic Association disclosure form.
- AS 24.60.070 Close Economic Association.
- Confidential Gift Not Related To Legislative Status disclosure form.
- AS 24.60.080(c)(6) Gifts not related to legislative status disclosure

Statutory language for the "confidential gift disclosure" and a "close economic association" disclosure are included in the packet for reference. They may provide guidance in developing the criteria for the Waiver Request disclosure form.

DISCUSSION BY COMMITTEE MEMBERS

1. What information should be supplied on the disclosure form?
2. Who is required to file a request to refrain from making a disclosure?
    a. The person providing the service.
    b. The person receiving the service is covered by the Act.

CONFIDENTIAL
REQUEST TO REFRAIN FROM MAKING A DISCLOSURE

NAME OF DISCLOSER: _____
Please Print
WORK ADDRESS: _____
PHONE NUMBER (Daytime) _____
EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d)

Person's Status with whom association exists: (public official, legislator, lobbyist, legislative employee under certain conditions) _____

Reason for request, please be specific:

Violation of: State Law _____
Federal Law _____
United States Constitution _____
State of Alaska Constitution _____
Rule adopted by a trade or profession that state or federal law requires the person to follow _____

Date of association: One-time association _____
On-going association : from _____ to _____
License #: _____
License Type: _____
License Expiration Date: _____
Nature of Services: _____

The above is a true and accurate representation of my request to refrain from making a disclosure in accordance with AS 24.60.105(d).
The work performed and/or the compensation received does not create an ethical conflict of interest with the person's work for the legislature.

_____ _____
Signature Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115
Within 30 days of association and annually within the first 30 days of a regular session

EXPLANATION

A person may submit a written request to refrain from making a disclosure if making the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification from the person making the request before determining whether it is sufficient.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM November 5, 2012

SUBJECT: Requests for waivers of ethics disclosures (Work Order No. 28-LS0119)

TO: Joyce Anderson, Administrator
Select Committee on Legislative Ethics

FROM: Dan Wayne
Legislative Counsel

You have asked for advice about how to administer AS 24.60.105(d), a new provision that allows the Select Committee on Legislative Ethics to grant, in some instances, requests for waivers of the Act's disclosure requirements. You have indicated that the committee is developing a form on which persons can request the waivers. As you have described it, the form would solicit basic information about the requestor plus additional information that is specific to the request. You are concerned that, when providing the additional information on the form, requestors may either provide some of the same information for which they are seeking a waiver, or they may withhold so much information that the committee is unable to properly evaluate the request.

The new language, sec. 10, ch. 45, SLA 2012 (HCS CSSB 89(JUD)), amends AS 24.60.105 by adding a new subsection that reads:

> (d) A person may submit a written request to refrain from making a disclosure that is required by this chapter if making the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification from the person making the request. At the request of the committee or a person authorized to act on behalf of the committee, a person who seeks to refrain from making a disclosure under this subsection shall provide the committee with justification in writing, and the committee may review the written justification to determine whether it is sufficient.

It is up to the committee to interpret the meaning of this language. A plain reading indicates that in a limited circumstance -- when making a disclosure would violate state or federal law or, in some cases, a formal rule of a trade or profession -- a person may

seek a waiver of a Legislative Ethics Act disclosure requirement by submitting a written request to the committee. The second sentence indicates that the committee may approve the request, deny it, or, before approving or denying it, require further information justifying the request. The last sentence requires that further information requested by the committee shall be provided in writing, and, once provided, the committee may review it for sufficiency.

Based on some of the recorded legislative history concerning AS 24.60.105(d), it appears that the legislature intended to create an exception that would allow persons who are subject to the Legislative Ethics Act to comply with the Act's disclosure requirements and at the same time avoid violating state or federal laws that require certain information to be kept confidential. For example, in a March 19, 2012 hearing of the House Judiciary Committee on CSSB 89(JUD), that committee heard testimony from Rynnieva Moss, a legislative aide to Senator John Coghill, the bill's prime sponsor, regarding proposed AS 24.60.105(d).[1] Ms. Moss said:

> Section 10 recognizes that there are certain statutes, and both the state and federal constitutions, that restrict disclosure, and that under current law we haven't given people an option of keeping the confidentiality for clients and not being required to disclose that information. This (bill section) basically says that if the committee requires you to disclose something that is (supposed) to be held confidential under state or federal law or the state constitution or the U.S. constitution, that you make a request that (the committee) waive the requirement so that you aren't breaking the law.

Earlier, at a January 18, 2012 hearing of the Senate Judiciary Committee, Senator Coghill summarized an amendment to the bill adopted the Senate State Affairs Committee to then-proposed AS 24.60.105(d). Sen. Coghill said:

> One of the questions we've had is, if someone is giving a service to someone in the legislature and for some reason there is a barrier to that, either by professional or some legal reason . . . I think the language (of proposed AS 24.60.105(d) was) actually broadened in the State Affairs Committee to include a rule adopted formally by a trade or profession and required, by state or federal law, for the person to follow. I guess one of the incidents came to the ethics committee that somebody was actually giving some health care to somebody and there was money changing hands and it wasn't ethically reported, and under that case the health care was confidential patient information. So, that was one case, and with

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[1] For this memo I reviewed legislative committee records and prepared a partial transcript (copy attached) from audio-recordings of testimony related to the language of proposed AS 24.60.105(d) in SB 89. The transcription is approximate and unofficial. In a few places I have added words parenthetically or inserted punctuation, to help illustrate meaning I think the witnesses intended to convey.

> lawyers I understand that there is sometimes a privilege of a client that can be confidential in certain circumstances. However, it (the bill as previously amended by the Senate State Affairs Committee) has the requirement that somebody explain. You'll see here, it says: "at the request of the committee or a person authorized by the committee a person who seeks to refrain from making a disclosure under this section shall provide the committee with justification." So, I think it holds an accountability both ways.

From the legislative history and the plain language of AS 24.60.105(d), it seems that the legislature intended to create a robust exception to protect persons from having to break one law in order to comply with another. It would be unreasonable to interpret AS 24.60.105(d) to require applicants for disclosure waivers to reveal the very information they seek a waiver for, if the confidentiality of that information is indeed legally required. However, it is also clear from the language and its history that the legislature intended to ensure that the new exception is not exploited. Note, for example, the phrase "or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow." It is reasonable to interpret the last clause of the phrase as a significant limitation on when a professional or trade rule can be invoked as a legal prohibition against disclosure.

AS 24.60.105(d) leaves it up to the committee to grant or deny requests for disclosure waivers, on a case-by-case basis. The provision's option to ask for additional information from applicants allows the committee the discretion to probe beyond the information provided on the request form. Keep in mind that when it does so the committee can limit what it asks for. For example, if a person has based a request on the simple fact that they are a lawyer, and hasn't provided any other detail about relationships with clients, type of work, etc., the committee could ask the person to affirm that the work performed or the compensation received does not create an ethical conflict of interest with the person's work for the legislature. Alternatively, the committee might ask a more specific question, like whether the person represents clients who stand to gain substantially from adoption or failure of particular legislation.

There may be many benefits to limiting the scope of requests for additional information in this context, but three come immediately to mind. First, it may make it easier for the committee to avoid being an arbiter or interpreter of state and federal confidentiality laws, which may exceed the scope of the committee's authority and duties set forth in AS 24.60.130 - 24.60.178. One of the committee's chief duties, under AS 24.60.140, is to issue advisory opinions under AS 24.60.160. According to AS 24.60.160(a), advisory opinions are limited to "whether the facts and circumstances of a particular case constitute a violation of ethical standards." In AO 11-05, footnote 2, the committee limited the scope of its opinion to within "the applicability of the Legislative Ethics Act," and said that "issuing advisory opinions beyond that scope exceeds the authority given the committee under AS 24.60.140 and 24.60.160." Second, limiting the scope of a request for additional information from a person requesting a disclosure waiver may

enable that person to satisfy the committee's concerns without exceeding the boundaries of legally required confidentiality. Even though AS 24.60.060 would prohibit legislators or legislative employees from making unauthorized disclosure of confidential information acquired this way, it may not apply to public members of the committee.[2] Third, where the committee has crafted follow-up questions to an applicant with a goal of making it possible for the applicant to provide information for a disclosure waiver, the reasonableness of the applicant's response may be helpful to the committee in determining whether or not the underlying request is legitimate.

You have asked whether the entire Select Committee on Legislative Ethics need weigh in on requests for waivers under AS 24.60.105(d). The committee can delegate administration of the subsection to you, but at some point in each case you may wish to consult with the committee or put the request directly before them. It may be helpful to establish general policy and procedure ahead of time in this regard.

You have asked if, in cases where two persons subject to the Act have a mutual close economic association, each should disclose it. The answer is yes, each is individually responsible for making required disclosures.

Please let me know if you have additional concerns, of if you want this office to review the request form you are putting together.

DCW:ljw
12-469.ljw

Attachment

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[2] AS 24.60.060(a) reads:

> (a) A legislator or legislative employee may not knowingly make an unauthorized disclosure of information that is made confidential by law and that the person acquired in the course of official duties. A person who violates this section is subject to a proceeding under AS 24.60.170 and may be subject to prosecution under AS 11.56.860 or another law.

UNOFFICIAL SUMMARY OF EXCERPTED COMMITTEE TESTIMONY ON SEC. 10, CH. 45 SLA 2012, (SEC. 10 OF HCS CSSB 89(JUD)). PREPARED BY DAN WAYNE, LEGISLATIVE COUNSEL, FROM AUDIO-RECORDINGS AVAILABLE ONLINE, ON "BASIS."

March 31, 2011, Senate State Affairs, 09:13 AM

Michele Sydeman, aide to committee co-chair Senator Bill Wielechowski, explained that a draft CS before the committee (version T) would make 4 substantive changes from version E of the bill, and that one of the changes would allow a person -- one who is subject to a Legislative Ethics Act disclosure requirement -- ask the ethics committee to waive disclosure of information that, if disclosed, would violate a confidentiality rule of the legislator or legislative employee's outside employment. She summarized the language, including new language proposing to include professional and trade rules that require confidentiality, as follows:

M. Sydeman: This provision allows a legislator or legislative employee to request to refrain from making a disclosure if making that disclosure would violate a rule adopted formally by his or her trade or profession, if state or federal law requires the person to follow the rules of his or her profession. So an example might be, if a lawyer, who is governed by rules of the bar association . . . it might say that under various circumstances it would cause harm to the lawyer's client to reveal the name of the client, then it's the lawyer's responsibility not to do so. And my understanding is that in order to be a practicing lawyer in Alaska you have to abide by the rules of the profession. ***So . . . page 10, lines 15 - 18, version T, and I'll read that new language to you.*** It says that 'a person may submit a written request to refrain from disclosure that is required by this chapter if making the disclosure would violate state or federal law, including the united states constitution and the constitution of the state of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow.' ***So that's the new language, just the (part that says) 'or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow.'"***

(Emphasis added).

. . .

Sen Giessel: "Michele, on page 10, section 8, you were talking about the disclosure by a professional. On line 18, it goes on, it says the committee shall approve or deny the request. Who is the committee?"

M. Sydeman: "Senator Giessel through the chair, my understanding is that it is the Legislative Ethics Committee."

Sen. Giessel: "OK. Thank you. Not APOC."

. . .

Sen. Coghill comments on the changes from the E version proposed the T version of the bill draft. Regarding section 8 of the CS he says: "In section 8, regarding the disclosures, I thought that the law had intended that, but having it explicit is good . . . so I think that's good."

April 15, 2011 Senate Judiciary, 1:50:20 PM

Rynneiva Moss, on the subject of SB 89, says: "section 8: this section allows for certain persons to be allowed to request a waiver from disclosing clients or making any disclosures that would violate state or federal law, the state or U.S. constitution, and, in State Affairs the language was added, on page 10, line 17 -18, 'or a rule adopted formally, by a trade or profession, that state or federal law requires the person to follow.' So it allows certain occupations not to have to disclose their sources of income from clients."

Sen. French: "Is this an ethics disclosure, or an APOC disclosure, or both?"

R. Moss: "This is an ethics disclosure."

Sen. French: "APOC we deal with separately. Thank you."

Sen. Coghill: "Mr. Chairman, it comes from, also, a close economic association that you have to file, and under HIPAA there are some restrictions on confidentiality. So, I think there was some concern that if someone was working on somebody here (in the legislature), in a health situation, how that might be reported."

January 18, 2012, Senate Judiciary, 01:56:18 PM

Sen. Coghill summarizes Sec. 8 of bill version T, as follows: "Section number 8 is under exceptions to disclose by written request. One of the questions we've had is, if someone is giving a service to someone in the legislature and for some reason there is a barrier to that, either by professional or some legal reason. I think the language actually broadened in the State Affairs Committee to include a rule adopted formally by a trade or profession and required, by state or federal law, for the person to follow. I guess one of the incidents came to the ethics committee that somebody was actually giving some health care to somebody and there was money changing hands and it wasn't ethically reported, and under that case the health care was confidential patient information. So, that was one case, and I think with lawyers I understand that there is sometimes a privilege of a client that can be confidential in certain circumstances. However, it has the requirement that somebody explain it. So, you'll see here, 'at the request of the committee or a person authorized by the committee a person who seeks to refrain from making a disclosure under this section shall provide the committee with justification' why. So, I think it holds an accountability both ways."

March 6, 2012, House State Affairs, 08:13 AM

Rynneiva Moss summarizes section 8 of SB89(JUD) for the HSTA committee, and the committee adopts the language of that section as part of HCS CSSB89(STA), which is moved out of committee on this date.

R. Moss: "Section 8 establishes an exception for financial disclosures. You would have to write to the committee and make a request to refrain from disclosure. But, anything that would violate a state or federal law or the constitutions would be allowed to be kept confidential."

Rep. Wilson: "In this part where it talks about financial disclosure, can you go over what that exactly means? The part with the financial disclosure?"

R. Moss: "Section 8 just says that if you have an occupation . . . Let's use a doctor as an example, where there are HIPAA laws that prevent disclosure. If you fall under that classification you just have to request from the committee that you can refrain from disclosing the name if you would be violating a statute or the constitution."

House Judiciary, 3/19/2012, 02:20:30 PM

Rynnieva Moss summarizes bill sections of CSSB89(JUD) for the House Judiciary Committee, summarizing bill section 10 (the language amending AS 24.60.105 by adding subsection (d), and exception to disclosure requirements for information that is confidential by law).

R. Moss: "Section 10 (formerly bill sec. 8) recognizes that there are certain statutes, and both the state and federal constitutions, that restrict disclosure, and that under current law we haven't given people an option of keeping the confidentiality for clients and not being required to disclose that information. This (bill section) basically says that if the committee requires you to disclose something that is (supposed) to be held confidential under state or federal law or the state constitution or the U.S. constitution, that you make a request that (the committee) waive the requirement so that you aren't breaking the law."

Alaska State Legislature

Select Committee on Legislative Ethics

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99510-1468

May 28, 2009

ADVISORY OPINION 2009-02

SUBJECT: Close Economic Association – Medical Services

RE: Close Economic Association

You are a legislative employee and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. Unless stated otherwise, the committee relies on facts that you have described in answering your questions.[1]

Statement of Facts

You are also a licensed medical professional who sometimes provides outpatient medical services to legislative colleagues, including legislators and legislative employees, although you do not provide medical services to your supervisor or at your supervisor's direction. In some instances you provide medical services to a person on a one-time basis; in other instances you provide medical services in a series of appointments. In all instances you are paid at or close to the market value for the type of service you provide and you assess fees according to standards and practices commonly used in your profession. You are paid directly by your clients, although they may be eligible for reimbursement through a medical insurance benefit in some instances. You are subject to federal and state law, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which require you to keep certain information relating to your services confidential.[2]

Discussion

You have asked if you are required to disclose the names of your clients, or other information about them, under AS 24.60.070, a section of the Legislative Ethics Act that requires disclosure of close economic associations. The section reads:

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[1] On the committee's behalf, legislative counsel contacted you by phone on February 18, 2009 and you provided factual information in that conversation that is supplemental to the written facts you provided on February 11, 2009.

[2] Although you have also asked that the committee advise you on the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), interpretation of that law exceeds the authority of this committee under AS 24.60.140 and 24.60.160. You are responsible for determining what HIPAA requires of you in this matter.

Sec. 24.60.070. Disclosure of close economic associations.

(a) A legislator or legislative employee shall disclose to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal, the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions; this paragraph does not apply to a public member of the committee;

(2) legislators;

(3) a public official as that term is defined in AS 39.50;

(4) a registered lobbyist; or

(5) a legislative employee if the person required to make the disclosure is a legislator.

(b) A legislator or legislative employee required to make a disclosure under this section shall make a disclosure by the date set under AS 24.60.105 of the legislator's or legislative employee's close economic associations then in existence. A disclosure under this section must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association.

(c) When making a disclosure under (a) of this section concerning a relationship with a lobbyist to whom the legislative employee is married or who is the legislative employee's domestic partner, the legislative employee shall also disclose the name and address of each employer of the lobbyist and the total monetary value received by the lobbyist from the lobbyist's employer. The legislative employee shall report changes in the employer of the spouse or domestic partner within 48 hours after the change. In this subsection, "employer of the lobbyist" means the person from whom the lobbyist received amounts or things of value for engaging in lobbying on behalf of the person.

(d) In this section, "close economic association" means a financial relationship that exists between a person covered by this chapter and some other person or entity, including but not limited to relationships where the person covered by this chapter serves as a consultant or advisor to, is a member or representative of, or has a financial interest in, any association, partnership, business, or corporation.

Your relationship with your clients is financial, as defined by subsection (d), since you are paid by your clients to provide a professional service. However, this does not necessarily mean that relationship involves a "substantial financial matter," something that subsection (a) requires of an economic relationship in order for it to be a close economic association and require disclosure under the Legislative Ethics Act, and we do not need to resolve that question in order to respond to your request.

In AO 88-01 we considered whether certain information about a lawyer-legislator's private clients, including their names, is exempt from the disclosure requirements of the Legislative Ethics Act. We said:

> The statutory language is straightforward and on its face allows no exceptions. However, it is axiomatic that a state law may not be enforced to conflict with the state or federal constitution and, in some areas, federal legislation has preempted the state's regulatory power. Therefore the committee determines to read into the statute a limited exception. To the extent that disclosure would conflict with an established constitutional right or with a federal prohibition against disclosure which preempts state law, a legislator should disclose the existence of a client but not the client's name, and also disclose the subject of the representation and the body before which the matter is held.

For the same reasons we adopted the foregoing exception in 1988, today we read into the Legislative Ethics Act another exception to the Act's disclosure requirements: a person who is subject to the disclosure requirements of the Legislative Ethics Act may withhold disclosure of information they would otherwise be required by the Act to disclose, to the extent that disclosure would conflict with an established constitutional right or with the requirements of a federal law.

The federal Health Insurance Portability and Accountability Act (HIPAA) requires that providers of health care services maintain strict confidentiality of patient records. The Legislative Ethics Act does not require that you disclose information that HIPAA requires you to withhold; however, the exception we have adopted in this opinion does not excuse compliance with the Act's disclosure requirements altogether. You are still required to comply with the disclosure requirements to the extent that your compliance does not conflict with HIPAA.

Conclusion

Based on the foregoing facts and for the reasons discussed above, the committee finds that AS 24.60.070 does not require you to disclose information that is required by law to be kept confidential, including information protected by confidentiality requirements of HIPAA. To the extent you are able to partially comply with the disclosure requirements of AS 24.60.070 without violating HIPAA requirements you should make a partial disclosure. You are responsible for determining what HIPAA requires of you in this regard, and for citing the specific HIPAA provisions that are relevant in your disclosure report to the committee.

Adopted by the Select Committee on Legislative Ethics on May 28, 2009.

Members present and concurring in this opinion were:

Senator Joe Thomas
Senator Tom Wagoner
Representative Berta Gardner
Representative John Coghill
H. Conner Thomas
Dennis "Skip" Cook
Ann Rabinowitz
Herman G. Walker, Jr.
Gary J. Turner, Chair

DCW:plm
09-105.plm

GIFT OF TRAVEL/HOSPITALITY DISCLOSURES — NOW DUE WITHIN 60 DAYS INSTEAD OF 30 DAYS - AS 24.60.080(d)

Many legislative offices have called indicating costs associated with a gift of travel and/or hospitality is not always available within 30 days from the beginning date of the trip. The reporting timeframe was changed to reflect these concerns. The following gift disclosures are now due within 60 days from the beginning date of the trip.

NOTE: Only legislative trips started August 22 or after meet the 60 day disclosure timeframe. All trips taken prior to August 22 must be disclosed within 30 days.

Click on each subject below for a printed version of the required form.

Gift of Travel and/or Hospitality
(Primarily for Matters of Legislative Concern)

Gift of Travel and/or Hospitality - Family Member
(Because of Legislative Connection)

Gift Related to Sanctioned Charity Event

Gift Related to Sanctioned Charity Event - Family Member
(Because of Legislative Connection)

HOW TO REQUEST TO REFRAIN FROM MAKING AN ETHICS DISCLOSURE — AS 24.60.105(d)

A person covered by the Act may make a written request to refrain from making a disclosure if the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow.

The person shall provide the committee with justification in writing.

The committee shall approve or deny the request, or require further justification. See Advisory Opinions 94-07, Violent Crimes Compensation Board, and 09-02, HIPAA.

EXAMPLE: A legislator or legislative employee provides medical services to a person and is paid directly by the client, although they may be eligible for reimbursement through a medical insurance benefit in some instances. Because of the financial relationship, a "close economic association' disclosure may be required under AS 24.60.070. However, under federal and state law, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the legislator or legislative employee is required to keep certain information relating to the services confidential. The legislator or legislative employee may submit a written request to the committee outlining the reason to refrain from disclosing the association.

ADVISORY OPINION SEARCH

ETHICS COMMITTEE— AS 24.60.131

One alternate *public* member shall be appointed to serve on the committee beginning in 2013. The alternate public member shall be selected by the Chief Justice of the Alaska Supreme Court and is subject to confirmation as required for appointment of the five regular public members.

The one alternate public member will be available to serve when a public member has a conflict due to scheduling or is disqualified under AS 24.60.130 (h).

An alternate member shall serve for the duration of that proceeding unless unable to participate or disqualified under AS 24.60.130(h).

Note: Beginning in 1999, each of the four legislative members has had an alternate legislative member appointed.

Disclosure of a

CLOSE ECONOMIC ASSOCIATION

in accordance with AS 24.60.070

NAME OF DISCLOSER: _____
(Please Print)

ADDRESS: _____

PHONE NUMBER (Daytime) _____

EMPLOYER (if legislative employee) _____

Person with whom association exists: _____

Person's status: _____
(Public official, legislator, registered lobbyist, legislative employee)

Type of economic association: (check one): 1.____Rent to 2.____Rent from 3.____ Share Housing

4. ____ Payment for: _____
(Please describe)

5.____Joint property ownership: _____
(Please describe)

6.____Joint business venture: _____
(Please describe)

7.____Other: _____
(Please describe)

NOTE: If you checked 4, 5, 6 or 7, please describe sufficiently enough so that a reader of the disclosure can ascertain the nature of the association.

Date of economic association: _____

The above is a true and accurate representation of my close economic association, in accordance with AS 24.60.070

_____ _____
Signature Date

☐ ***Check box ONLY if this is your 90 day final report and there are no changes to the above information.*** *AS 24.60.115 requires legislators, legislative employees and public members of the committee leaving service to disclose every matter or interest UNLESS previously disclosed OR the matter or interest is no longer subject to disclosure.*

_____ _____
Signature Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115

- Within 30 days of association.
- Annually within the first 30 days of a regular session.
- 90 days after final day of service.

EXPLANATION

A Close Economic Association means a financial relationship between a person covered by the Ethics Act and some other person or entity, including relationships where the legislator or legislative employee serves as a consultant or advisor to, is a member or representative of or has a financial interest in any association, partnership, business or corporation. Those covered by the Ethics Act are required to disclose their close economic associations, in sufficient detail, with supervisors, legislators, public officials defined in AS 39.50, registered lobbyists and, if the discloser is a legislator, with legislative employees.

For legislative employees with a lobbyist spouse or domestic partner, additional requirements apply. See separate disclosure form.

Sec. 24.60.070. Disclosure of close economic associations.

(a) A legislator or legislative employee shall disclose to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal, the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions; this paragraph does not apply to a public member of the committee;
(2) legislators;
(3) a public official as that term is defined in AS 39.50;
(4) a registered lobbyist; or
(5) a legislative employee if the person required to make the disclosure is a legislator.

(b) A legislator or legislative employee required to make a disclosure under this section shall make a disclosure by the date set under AS 24.60.105 of the legislator's or legislative employee's close economic associations then in existence. A disclosure under this section must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association.

(c) When making a disclosure under (a) of this section concerning a relationship with a lobbyist to whom the legislative employee is married or who is the legislative employee's domestic partner, the legislative employee shall also disclose the name and address of each employer of the lobbyist and the total monetary value received by the lobbyist from the lobbyist's employer. The legislative employee shall report changes in the employer of the spouse or domestic partner within 48 hours after the change. In this subsection, "employer of the lobbyist" means the person from whom the lobbyist received amounts or things of value for engaging in lobbying on behalf of the person.

FAX: 269-0152 Mail: P.O. Box 101468, Anch. AK 99510 Pouch: Anchorage

CONFIDENTIAL

Disclosure of receipt of

GIFT NOT RELATED TO LEGISLATIVE STATUS

NAME OF DISCLOSER: _____

Please Print

ADDRESS: _____

PHONE NUMBER (Daytime): _____

EMPLOYER: (if legislative employee) _____

Disclosure of receipt of a gift not related to legislative status, in accordance with AS 24.60.080(c)(6)

Name of donor: _____

Occupation of donor: _____

_____

Address of donor: _____

Description of gift(s) with a value of $250 or more: _____

_____

Reason gift(s) unrelated to recipient's legislative status: _____

_____

_____

Date gift(s) received: _____

The above is a true and accurate representation of the gift received, in accordance with AS 24.60.080(c)(6)

_____ _____

Signature Date

REPORTING DEADLINE: AS 24.60.080(d)

Within 30 days of receipt of the gift.

EXPLANATION

A legislator or legislative employee may not solicit or accept any gift worth $250 or more, or gifts from the same person which total $250 or more in a calendar year. An **exception** to that rule is **gifts not related with recipient's legislative status.** A person who accepts a gift of $250 or more under the "not related status" exception must confidentially disclose receipt of the gift.

Sec. AS 24.60.080 Gifts

(c) Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept

(6) gifts that are not connected with the recipient's legislative status;

(d) . . . A legislator or legislative employee who accepts a gift under (c)(6) of this section that has a value of $250 or more shall, within 30 days after receiving the gift, disclose to the committee the name and occupation of the donor and a description of the gift. The committee shall maintain disclosures relating to gifts under (c)(6) of this section as confidential records and may only use, or permit a committee employee or contractor to use, a disclosure under (c)(6) of this section in the investigation of a possible violation of this section or in a proceeding under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the record of a proceeding under AS 24.60.170, the confidentiality provisions of that section apply to the disclosure.