Maryland Department of Budget & Management

DBM – people and technology…
a partnership for the new millennium

Office of the Secretary

ROBERT L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lieutenant Governor

JAMES C. DIPAULA
Secretary

July 21, 2003

MEMORANDUM

TO: **Secretaries and Heads of Independent State Agencies**

FROM: **James C. DiPaula**
Secretary

SUBJECT: **Employee Benefits Enrollment Records: Privacy Protections**

The privacy regulations promulgated by the federal Department of Health and Human Services in compliance with the Health Insurance Portability and Accessibility Act of 1996 (HIPAA) require greater privacy protections for health benefit enrollment information. HIPAA empowers the federal Department of Health and Human Services to investigate complaints of and impose civil monetary penalties for violations of the privacy standards. Each violation of a single standard could result in up to $100 in fines with a $25,000 maximum annual cap for identical violations of the same standard. Violations of more than one standard could result in multiple penalties.

In order to more fully protect employee enrollment records, each agency is asked to assist the State in HIPAA compliance efforts related to the health benefit plans by (1) restricting access to enrollment information to only those personnel who need such access to perform their jobs, (2) maintaining enrollment information separate from the remainder of the employee's personnel file and (3) in the event that an agency receives a request for benefits enrollment information, referring to the HIPAA training materials distributed by the Employee Benefits Division to all agency benefit coordinators and contacting the Employee Benefits Division with any questions before disclosing the information to anyone other than the employee to whom it refers.

In general, the only records in a State personnel file that HIPAA protects will be the health benefits enrollment records (such as completed enrollment forms and dependent verification documents). Other pieces of the personnel record that might contain medical information (for example: sick leave slips, FMLA medical certifications, reports of on-the-job injuries, disability/workability reports, drug test reports for sensitive personnel) are not covered

45 Calvert Street • Annapolis, MD 21401-1907
Tel: (410) 260-7041• Fax: (410) 974-2595 • Toll Free: 1 (800) 705-3493 • TTY users call via Maryland Relay
http://www.dbm.state.md.us

by HIPAA because these records are held for employment purposes and not for health plan purposes. However, existing State and federal laws do protect the confidentiality of these personnel and employment records and prohibit the disclosure of this information except in limited circumstances.

Like all personnel records, an employee's enrollment information is already confidential under State law, but additional steps are necessary to protect the confidentiality of this information under the HIPAA privacy regulation. Access to any paper or electronic versions of the data should be restricted to only those personnel in each agency that require access to benefit enrollment information for the purpose of administering and maintaining the health benefits of employees, such as the benefit coordinators. Further, the information should be maintained in a secure manner. For example, enrollment information should be kept in file cabinets or filing areas that are not accessible to the general public or other agency employees. Human resources staff members should not discuss the benefit enrollments of any employee outside of the work environment. Benefits enrollment information should be kept separate from the remainder of an employee's personnel file the same way the Family Medical Leave Act (FMLA) certifications are kept separate from other personnel records. Placing FMLA and enrollment records in the same place, but separate from the file containing other personnel records, such as transfer information and PEP evaluations, satisfies this requirement.

If you have any questions about the HIPAA requirements, please contact Gladys Gaskins, Director, Employee Benefits Division, at 410-767-4710.

cc: SPMS and Independent Agency Personnel Directors
OPSB Directors