

Memorandum of Understanding  
(Privacy of Protected Health Information)

Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. Section 84,462 et seq. (Dec. 28, 2000) and all subsequent provisions and Federal guidance ("HIPAA Privacy Rule"), The Office of State and Local Health Benefits Programs (OHB), and plan sponsor, named on the signature page of this agreement, wish to enter into an agreement that addresses the requirements of the HIPAA Privacy Rule with respect to the local plan sponsor's role in administering the health benefits plan for the group's employees.

I. This agreement is intended to ensure that the plan sponsor will establish and implement appropriate safeguards (including certain administrative requirements) for Protected Health Information (PHI) as regulated by the Office of Health and Human Services and outlined in the OHB HIPAA implementation package.

As used in this agreement PHI means individually identifiable health information maintained and transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that is created or received by a health care provider, health plan, plan sponsor, or health care clearinghouse, and relates to: (A) the past, present, or future physical or mental health or condition of an individual; (B) the provision of health care to an individual; or (C) the past, present, or future payment for the provision of health care to an individual, and that identifies or could reasonably be used to identify an individual.

II. The plan sponsor acknowledges and agrees that in providing administrative assistance to employees and The Health Benefits Plan for State and Local Employees,

- a. The plan sponsor may, receive, use, or disclose PHI. However, the sharing of PHI is restricted to those individuals who have a need to know the information in order to assist the affected individual and the information will be maintained in the strictest of confidence.
- b. When requesting, using or disclosing PHI the plan sponsor must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- c. All protected information received by the plan sponsor should be secured and accessible only to benefits personnel who have been authorized to assist the employee.

III. As a member of The Local Choice (TLC) program it is understood that the employee handbooks serve as part of the TLC wraparound plan document for plan sponsors who participate in the program. It is further understood that such booklets have been amended (as prescribed by the HIPAA privacy rule) to permit the TLC program to release PHI to the plan sponsor so that the plan sponsor has the ability to analyze renewals, or to secure other coverage outside of the TLC program. Furthermore, the plan sponsor agrees to: (1) not use or further disclose protected health information other than as permitted or required by the plan documents or as required by law; (2) ensure that any subcontractors or agents to whom the plan sponsor provides protected health information agree to the same restrictions; (3) not use or disclose the protected health information for employment-related actions; (4) report to the group health plan

any use or disclosure that is inconsistent with the plan documents or this regulation; (5) make the protected health information accessible to individuals; (6) allow individuals to amend their information; (7) provide an accounting of its disclosures; (8) make its practices available to the Secretary for determining compliance; (9) return and destroy all protected health information when no longer needed, if feasible; and (10) ensure that the firewalls have been established between those functions required to administer the health benefits plan and all other functions conducted by the employer.

III. The plan sponsor acknowledges that any infraction of these referenced regulations by the plan sponsor or plan sponsor representative may result in sanctions or penalties for noncompliance. These penalties are imposed by the Office of Civil Rights (OCR), which include criminal fines of up to \$250,000 and imprisonment for up to 10 years. The severity of the penalties varies depending on the violation (see the implementation package for more specific information). The plan sponsor agrees that any such penalty imposed by OCR, which is resultant of any action, or inaction taken by one of their representatives, will be the responsibility of the plan sponsor.

IV. The undersigned hereby agree to the provisions contained in this memorandum of understanding:

by: \_\_\_\_\_  
Name Date  
(Title)  
(Plan sponsor's Name)

by: \_\_\_\_\_  
Mary P. Habel Date  
Director  
Office of State and Local Health Benefits Programs