

## **The Employees Retirement System of Texas NOTICE OF PRIVACY PRACTICES**

The Employees Retirement System of Texas (ERS) administers the Texas Employees Uniform Group Insurance Program, including your health plan, pursuant to Texas law. This Notice is required by the Privacy Regulations adopted pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). **THIS NOTICE DESCRIBES HOW ERS MAY USE OR DISCLOSE MEDICAL INFORMATION ABOUT YOU AND HOW YOU CAN GET ACCESS TO YOUR OWN INFORMATION. PLEASE REVIEW THIS NOTICE CAREFULLY.** This Notice also sets out ERS's legal obligations concerning your health information. Additionally, this Notice describes your rights to access and control your health information. **THIS NOTICE OF PRIVACY PRACTICES SHALL BECOME EFFECTIVE ON APRIL 14, 2003.**

*If you have questions or want additional information about the privacy practices described in this Notice, please contact in writing: Privacy Officer, ERS, P.O. Box 13207, Austin, Texas 78711-3207.*

### **What is Protected Health Information (PHI)?**

Protected health information (PHI) is individually identifiable health information, including demographic information, collected from you or created or received by a health care provider, a health plan, your employer, or a health care clearinghouse and that relates to: (i) your past, present, or future physical or mental health or condition; (ii) the provision of health care to you; or (iii) the past, present, or future payment for the provision of health care to you.

### **Our Responsibilities**

ERS is required by law to maintain the privacy of your PHI. ERS is also obligated to provide you with a copy of this Notice of our legal duties and our privacy practices with respect to PHI and to abide by the terms of this Notice. ERS reserves the right to change the provisions of this Notice and make the new provisions effective for all PHI that ERS maintains. If ERS makes a material change to this Notice, ERS will provide you a copy of the revised Notice.

### **Primary Uses and Disclosures of Protected Health Information**

The following is a description of how ERS is most likely to use and/or disclose your PHI when necessary for the administration of your group health plan.

ERS and/or auditors, actuarial consultants, lawyers, third-party administrators or pharmacy benefit managers under contract with ERS may use and disclose health information about you to carry out payment, health care operations, and for other purposes that are permitted or required by law. When "ERS" is used in this Notice, the auditors, actuarial consultants, lawyers, third-party administrators, and pharmacy benefit managers acting on behalf of ERS and the health plan are intended to be included.

- ***Payment and Health Care Operations***

ERS has the right to use and disclose your PHI for all activities that are included within the definitions of “payment,” “treatment” and “health care operations” as set out in 45 C.F.R. § 164.501 (this provision is a part of what is known as “the HIPAA Privacy Regulations”). ERS has not listed in this Notice all of the activities included within these definitions, so please refer to 45 C.F.R. § 164.501 for a complete list.

- *Payment*

ERS will use or disclose your PHI to obtain premiums, to determine cost share, or otherwise fulfill our responsibilities for coverage and providing benefits as established under the Master Benefit Plan Document detailing the plan benefits. For example, ERS may disclose your PHI when a provider requests information regarding your eligibility for coverage under the health plan, or when health care providers submit claims for payment for treatment you have received that may be covered by the health plan. ERS may use your PHI when necessary to determine if a treatment that you received was medically necessary.

Treatment

ERS is not a medical provider and does not provide medical treatment. However, in some circumstances, ERS may use or disclose your PHI for purposes of facilitating or authorizing payment for treatment.

- *Health Care Operations*

ERS will use or disclose your PHI to support plan administration functions. These functions include but are not limited to: specification of coverages; claims administration; quality assessment and improvement; promoting efficiency; prevention of waste; fraud and abuse in health care operations; reviewing provider performance and credentials; and for strategic planning, including using relevant information to obtain stop-loss coverage for the health plan. For example, ERS may use your PHI (i) to provide you with information about one of our disease management programs; (ii) to respond to a customer service inquiry from you, or, when certain conditions are met; (iii) to inform you about health-related benefits or services that may be of interest to you; or (iv) to obtain bids or quotes from potential business associates that provide services to the health plan.

- ***Business Associates***

ERS contracts with individuals and entities (business associates), usually auditors, actuarial consultants, third-party administrators or pharmacy benefit managers, to perform various functions on behalf of the health plan or to provide certain types of services for the health plan. Some of the functions they provide are performing audits; performing actuarial analysis; adjudication and payment of claims; customer service support; utilization review and management; coordination of benefits; subrogation; eligibility underwriting; and pharmacy benefit management. To perform these functions or to provide the services, business

associates will receive, create, maintain, use, or disclose PHI, but only after ERS requires the business associates to agree in writing to contract terms designed to appropriately safeguard your information.

- ***Plan Sponsor***

The Plan Sponsor of the group health plan is the State of Texas. ERS may disclose your PHI to the Plan Sponsor.

### **Other Possible Uses and Disclosures of Protected Health Information**

The following is a description of other possible ways that ERS may (and is permitted to) use and/or disclose your PHI.

- ***Required by Law***

ERS may use or disclose your PHI to the extent that federal, state, or local law requires the use or disclosure. When used in this Notice, “required by law” is defined as it is in the HIPAA Privacy Regulations.

- ***Public Health Activities***

ERS may use or disclose your PHI for public health activities that are permitted or required by law. For example, ERS may use or disclose information for the purpose of preventing or controlling disease, injury or disability, or ERS may disclose such information to a public health authority authorized to receive such information. ERS also may disclose your PHI, if directed by a public health authority, to a foreign government agency that is collaborating with the public health authority, although such a disclosure would not be routine and would occur only in very rare circumstances.

- ***Governmental and Health Oversight Activities***

ERS may disclose your PHI to the Texas Legislature or other agencies of the state or federal government, including but not limited to health oversight agencies for activities authorized by law, such as audits; investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities. Oversight agencies seeking this information include government agencies that oversee: (i) the health care system, (ii) government benefit programs, (iii) other government regulatory programs, and (iv) compliance with civil rights laws.

- ***Abuse or Neglect***

ERS may disclose your PHI to a government authority that is authorized by law to receive reports of child abuse or neglect, or domestic violence. Additionally, as required by law, ERS may disclose your PHI to a governmental entity authorized to receive such information if ERS has information that you may have been a victim of abuse, neglect, or domestic violence.

- ***Legal Proceedings***

ERS may disclose your PHI: (1) in the course of any judicial or administrative proceeding, including but not limited to an appeal of denial of coverage or benefits; (2) in response to an order of a court or administrative tribunal (to the extent such disclosure is expressly

authorized by law); and (3) in response to a subpoena, a discovery request, or other lawful process, once ERS has met all administrative requirements of the HIPAA Privacy Regulations.

- ***Law Enforcement***

Under certain conditions, ERS also may disclose specific aspects of your PHI to law enforcement officials, as provided by law. Some of the reasons for such a disclosure may include, but not be limited to: (1) because it is required by law or some other legal process; (2) because it is necessary to locate, apprehend or identify a suspect, fugitive, material witness, or missing person; and (3) because it is necessary to provide evidence of a crime that occurred on our premises.

- ***Coroners, Medical Examiners, Funeral Directors, and Organ Donation***

ERS may disclose PHI to a coroner or medical examiner for purposes of identifying a deceased person, determining a cause of death, or for the coroner or medical examiner to perform other duties authorized by law. ERS also may disclose, as authorized by law, PHI to funeral directors so that they may carry out their duties. Further, ERS may disclose PHI to organizations that handle organ, eye, or tissue donation and transplantation.

- ***Research***

ERS may disclose your PHI to researchers when an institutional review board or privacy board has: (1) reviewed the research proposal and established protocols to ensure the privacy of the information and (2) approved the research.

- ***To Prevent a Serious Threat to Health or Safety***

Consistent with applicable federal and state laws, ERS may disclose your PHI if we believe that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. ERS may also disclose your PHI if it is necessary for law enforcement authorities to identify or apprehend an individual.

- ***Military Activity and National Security, Protective Services***

Under certain conditions, ERS may disclose your PHI if you are, or were, armed forces personnel for activities deemed necessary by appropriate military command authorities. If you are a member of foreign military service, we may disclose, in certain circumstances, your information to the foreign military authority. We also may disclose your protected health information to authorized federal officials for conducting national security and intelligence activities, and for the protection of the President, other authorized persons, or heads of state.

- ***Inmates***

If you are an inmate of a correctional institution, ERS may disclose your PHI to the correctional institution or to a law enforcement official for: (1) the institution to provide health care to you; (2) your health and safety and the health and safety of others; or (3) the safety and security of the correctional institution.

- ***Workers' Compensation***

ERS may disclose your PHI to comply with workers' compensation laws and other similar programs that provide benefits for work-related injuries or illnesses.

▪ ***Others Involved in Your Health Care***

Unless you object, ERS may disclose your PHI to a friend or family member that you have identified as being involved in your health care and have authorized to receive such information. ERS also may disclose your information to an entity assisting in a disaster relief effort so that your family can be notified about your condition, status, and location. If you are not present or able to agree to these disclosures of your PHI, then ERS may, using our professional judgment, determine whether the disclosure is in your best interest. ERS will attempt to gain your personal authorization when possible before making such disclosures.

**Required Disclosures of Your PHI**

The following is a description of disclosures that ERS is required by law to make.

▪ ***Disclosures to the Secretary of the U.S. Department of Health and Human Services***

ERS is required to disclose your protected health information to the Secretary of the U.S. Department of Health and Human Services when the Secretary is investigating or determining our compliance with the HIPAA Privacy Regulations.

▪ ***Disclosures to You***

ERS is required to disclose to you most of your PHI in a "designated record set" when you request access to this information. Generally, a "designated record set" contains medical and billing records, as well as other records that are used to make decisions about your health care benefits. ERS is also required to provide, upon your request, an accounting of most disclosures of your PHI that are made for reasons other than payment and health care operations. In many cases, your PHI will be in possession of a plan administrator or pharmacy benefits manager. If you request PHI, ERS will work with the administrator or pharmacy benefits manager to provide your PHI to you.

**Other Uses and Disclosures of Your Protected Health Information**

Other uses and disclosures of your PHI that are not described above will be made only with your written authorization. If you provide ERS with such an authorization, you may revoke the authorization in writing, and this revocation will be effective for future uses and disclosures of PHI. However, the revocation will not be effective for information that ERS already has used or disclosed, relying on the authorization.

**YOUR RIGHTS**

The following is a description of your rights with respect to your PHI.

▪ ***Right to Request a Restriction***

You have the right to request a restriction on the PHI we use or disclose about you for payment or health care operations.

*ERS is not required to agree to any restriction that you may request. If ERS does agree to the restriction, ERS will comply with the restriction unless the information is needed to provide emergency treatment to you.*

You may request a restriction by writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207. In your request, tell the Privacy Officer: (1) the information whose disclosure you want to limit and (2) how you want to limit our use and/or disclosure of the information.

▪ ***Right to Request Confidential Communications***

If you believe that a disclosure of all or part of your PHI may endanger you, you may request that we communicate with you regarding your information in an alternative manner or at an alternative location. For example, you can ask that we only contact you at your work address or via an alternate email address, although many agencies won't let you receive personal emails. However, ERS will not send PHI by email unless it is possible for the PHI to be encrypted.

You may request a restriction by writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207. In your request tell us: (1) the parts of your PHI that you want us to communicate with you in an alternative manner or at an alternative location and (2) that the disclosure of all or part of the information in a manner inconsistent with your instructions would put you in danger.

▪ ***Right to Inspect and Copy***

You have the right to inspect and copy your PHI that is contained in a "designated record set." Generally, a "designated record set" contains medical and billing records, as well as other records that are used to make decisions about your health care benefits. However, you may not inspect or copy psychotherapy notes or certain other information that may be contained in a designated record set.

To inspect and copy your PHI contained in a designated record set, you must submit your request in writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207. If you request a copy of the information, ERS may charge a fee for the costs of compiling, copying, mailing, or other supplies associated with your request. As noted above, your PHI will often be held by an administrator or pharmacy benefits manager for the health plan. In such case, ERS will coordinate with the administrator or benefits manager to provide to you the PHI you request.

The Privacy Officer may deny your request to inspect and copy your PHI in certain limited circumstances. If you are denied access to your PHI, you may request that the denial be reviewed. ERS will choose a licensed health care professional to review your request and the denial. The person performing this review will not be the same one who denied your initial request. Under certain conditions, the denial will not be reviewable. If this event occurs, the Privacy Officer will inform you in our denial that the decision is not reviewable.

- ***Right to Request Amendment***

If you believe that your PHI is incorrect or incomplete, you may request that ERS amend your information. You may request that we amend your information by writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207. Additionally, your request should include the reason the amendment is necessary.

In certain cases, the Privacy Officer may deny your request for an amendment. For example, the Privacy Officer may deny your request if the information you want to amend is not maintained by ERS, but by another entity, or was not created by ERS but by a medical provider. If the Privacy Officer denies your request, you have the right to file a statement of disagreement with the Privacy Officer. Your statement of disagreement will be linked with the disputed information, and all future disclosures of the disputed information will include your statement.

- ***Right of an Accounting***

You have a right to an accounting of most disclosures of your PHI that are for reasons other than treatment, payment or health care operations. An accounting will include the date(s) of the disclosure, to whom we made the disclosure, a brief description of the information disclosed, and the purpose for the disclosure.

You may request an accounting by submitting your request in writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207. Your request may be for an accounting of disclosures made up to six (6) years before the date of your request, but in no event, for disclosures made before April 14, 2003. The first list you request within a 12-month period will be free. For additional lists, ERS may charge you for the costs of providing the list. ERS will notify you of the cost involved, and you may choose to withdraw or modify your request at the time before any costs are incurred.

- ***Right to a Paper Copy of This Notice***

You have the right to a paper copy of this Notice, even if you have previously agreed to accept this Notice electronically.

## **Complaints**

You may complain to ERS if you believe that ERS has violated your privacy rights. You may file a complaint with ERS by writing to: Privacy Officer, ERS, P.O. Box 13207, Austin, TX 78711-3207.

You also may file a complaint with the Secretary of the U.S. Department of Health and Human Services. Complaints filed directly with the Secretary must: (1) be in writing; (2) contain the name of the entity against which the complaint is lodged; (3) describe the relevant problems; and (4) be filed within 180 days of the time you became or should have become aware of the problem.

ERS will not penalize or in any other way retaliate against you for filing a complaint with ERS or with the Secretary.

**Effective Date**

This notice was published on or before April 14, 2003 and becomes effective on April 14, 2003.