



**State of Oklahoma
Office of Management and Enterprise Services
Policies and Procedures**

OMES Designation as a Hybrid Entity under HIPAA

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Approved: Dana Webb, as Designee of OMES Director John Budd	Approval Date: 02/25/2019

Introduction

Office of Management and Enterprise Services: The Office of Management and Enterprise Services (OMES) is an agency of the State of Oklahoma created pursuant to 62 O.S. (2012) § 34.3. OMES is a single legal entity comprised of separate departments, some of which provide “covered functions” as “health care components” of OMES, as these terms are defined below. OMES strives to protect the confidentiality, integrity and availability of protected health information (PHI).

Policy Statement

To define OMES as one legal entity, specifically a hybrid entity, providing both HIPAA-covered and non-covered functions as part of its business operations and identify OMES’ health care components to comply with the Privacy Rule, in accordance with the privacy and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information *Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”)*. *This Hybrid Entity Policy* specifically addresses the requirements of 45 C.F.R. §§ 164.103 and 164.105.

HIPAA Background and Authority

- A. A legal entity that performs both covered and non-covered functions may designate itself as a hybrid entity under HIPAA.
- B. A legal entity that designates itself as a hybrid entity:

1. May choose to not enforce global application of the Privacy Rule to its covered entity (OMES) status excluding the non-health care components of the organization (e.g., operations of the State of Oklahoma’s motor pool services). All covered health care components of the designating legal entity must comply with HIPAA, and the covered entity must retain oversight, compliance and enforcement obligations.
2. May have non-health care components affected by the Privacy Rule because the health care components are limited in how it can share Personal Health Information.
3. Must designate, as part of its covered functions, any component that would meet the definition of a covered entity if it were a separate legal entity.

Definitions

- A. *Covered function* – Those functions of a covered entity of which the performance makes the entity a health plan, health care provider, or health care clearinghouse.
- B. *Hybrid entity* – A legal entity meeting the requirements of “hybrid entity” as defined under 45 C.F.R. 164.103, as amended.
- C. *Firewall* – Those processes to separate entities due to conflict of interests, and the hardware, software or other methods used to all or block information into and out of a health care component.
- D. *Health care component* – A component, or combination of components, of a hybrid entity designated by the hybrid entity in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).
- E. *Privacy Rule* – As used in this policy, the Health Insurance Portability and Accountability Act of 1996 (as amended), regulations found at 45 C.F.R. Part 160 and Subparts A and E of Part 164 (as amended), and associated sub-regulatory guidance.

PROCEDURES TO IMPLEMENT

- A. Procedures:
 1. OMES has determined that it performs both covered functions (e.g., operating a self-insured health plan with access to all health claim data) and non-covered functions (e.g., purchasing of non-health related services and goods for the State of Oklahoma).
 2. By the adoption and implementation of this policy, OMES designates itself as a hybrid entity in accordance with 45 C.F.R. §§ 164.103 and 164.105.
 3. In accordance with 45 C.F.R. 164.105(a)(2)(iii)(C), the following components have been designated by OMES as “covered components” of the hybrid entity:
 - a. The Employees Group Insurance Division (EGID).
 - b. The Legal Division. And
 - c. The Information Services division (IS) as it applies to maintenance and storage of PHI.
 4. Designations of health care components shall be retained for at least six (6) years following any decision to terminate any division or department from the health care components. Designations should be retained indefinitely for on-going health care components.
 5. Hybrid Entity Safeguard Requirements: As a covered entity that is a hybrid entity,

OMES must ensure that a health care component of the entity complies with the applicable requirements of HIPAA. Firewalls must be implemented between health care functions and non-health care functions. OMES shall operationally segregate all non-covered functions from the covered functions. In particular, OMES will ensure that each health care component:

- a. Does not disclose PHI to another (non-health care) component of the covered entity in circumstances in which HIPAA would prohibit such disclosure if the health care component and the other component were separate and distinct legal entities.
 - b. Does not use or disclose PHI that it creates or receives from or on behalf of the health care component in a way that is prohibited by HIPAA's Privacy Standards.
 - c. Complies with the HIPAA Security Standards.
 - d. Where possible, segregates its staff and office space from non-covered functions.
6. If a person performs duties for both the health care component in the capacity of a member of the workforce of such component and for another component of the entity in the same capacity with respect to that component, such workforce member must not use or disclose PHI created or received in the course of, or incident to, the workforce member's work for the health care component.

References

45 C.F.R. §§ 164.103, 164.105