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SUBJECT: HEALTH INSURANCE PORTABILITY & ACCESSIBILITY ACT (HIPAA)

ADOPTED DATE: JANUARY 21, 2003

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**Policy Statement:** The Cass County HIPAA policies contained herein shall apply to each and every affected Department in Cass County relevant to the storage and dissemination of Individuals Identifiable Health Information ("IIHI") (hereinafter "Privacy Regulation").

It is the policy of Cass County to provide for enhanced security and privacy of individual health information and standardize data interchanges between Cass County and health-care organizations, the State of North Dakota or other business associates.

**Appointment and Duties of Data Privacy Officer:** The Cass County Administrator, Auditor and Social Services Director shall serve as the Privacy Officers for Cass County (hereinafter "Privacy Officers"). The Privacy Officers shall carry out and implement the policies stated herein and otherwise required under applicable Federal, State, and local laws.

The Privacy Officers shall receive requests or complaints and should provide information about matters covered by HIPAA. The Privacy Officers need to be familiar with privacy regulations. Delegation of some of these duties may be given by the Privacy Officer to those whom they may designate within their departments. The County Administrator is the point person for implementation of these policies in Cass County, as a whole.

**Minimum Necessary Policies:** Cass County will make reasonable efforts to limit the use and disclosure of IIHI. Release will be to accomplish the intended purpose of the use or disclosure. In general, release policies do not apply in the following circumstances:

- \*Disclosures for treatment;
- \*Use or disclosures made to the individual subject of the data;
- \*Disclosures made to DHS, Office of Civil Rights;
- \*Use or disclosure as required by law or court order;
- \*Use or disclosure required for compliance with the privacy regulation.

For the appropriate uses, Cass County will provide access to IIHI only to those employees on a "need to know" basis. Employees will only be given information that the employee needs to have in order to accomplish a given function and only for proper administration of HIPAA. Cass County will limit the amount of IIHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure on a case-by-case basis. For appropriate uses, Cass County will release non-routine IIHI when it is determined that the request constitutes a valid request and IIHI to be disclosed will be limited to the amount reasonably necessary to accomplish the purpose of the disclosure.

Cass County may rely on a reasonable request as the minimum necessary for the stated purpose(s) when:

- \*The disclosure is to a public official as allowed in the social responsibility reporting found in § 45 CFR 164.512;
- \*The information is requested by another covered entity;
- \*The information is requested by an employee or business associate of Cass County;
- \*The disclosure is for research purposes and the County has documented a waiver approval as required by 45 CFR 164.512(1).

**Access to Designated Record Set:**

Individuals have a right to access any protected health information that is used to make decisions about the individual subject of the data, including information used to make health-care decisions or information used to determine whether a claim will be paid. The individual has a right to access their "designated record set." The right of access also applies to health-care clearinghouses, health-care providers that create or receive protected IIHI other than as a business associate of Cass County.

For Cass County's purposes, the following is defined as a "designated record set:"

- \*A group of records maintained by Cass County that is: a) the medical records and billing records about individuals;
- b) the enrollment, payment, claims adjudication and case management record systems maintained by Cass County;

c) used, in whole or in part, by or for Cass County to make decisions about individuals.

\*The term "record" means any item, collection, or grouping of information that includes protected IIHI data and is maintained, collected, used or disseminated by the County.

Cass County will permit any individual to request access to inspect or copy the designated record set applicable to that individual for as long as it is maintained by Cass County, with the following exceptions:

- \*Psychotherapy notes;
- \*Information compiled in reasonable anticipation of a civil, criminal or administrative action or proceeding;
- \*Information held by clinical laboratories if access is prohibited by the Clinical Laboratory Improvements Amendment of 1988 (42 USC 263a);
- \*Any data that North Dakota State Law classifies as "confidential" or protected non-public.

Cass County will require that any individual requesting access to present that request in writing. This is in conformity with Cass County's basic data practices protocol. A Release of Information document must be completed.

Requests for access to IIHI will be handled by the Privacy Officer in the affected department or their designees. Requests should be sent to one of the following:

**Cass County Auditor**  
211 9th Street South  
Fargo ND 58103

**Cass County Personnel**  
211 9th Street South  
Fargo ND 58103

**Cass County Social Services**  
1010 2<sup>nd</sup> Avenue South  
Fargo ND 58103

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If Cass County provides access to IIHI, it will act on the request within thirty (30) calendar days. One thirty (30) day extension will be allowed. Cass County will charge a reasonable, cost-based fee that will only include the cost of copying, postage and preparation of an agreed-upon summary or explanation of the IIHI.

If Cass County denies access to IIHI, Cass County will provide a timely, written denial that states the basis for the denial and the procedures for making a complaint to the County Administrator. The individual has a right to a review of the denial of access by the County Administrator who did not participate in the original decision to deny access. In some situations, the individual would have the right to review a denial by a designated licensed health professional who did not participate in the original decision. Those scenarios include, but are not limited to, the following:

- \*A licensed health-care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.
- \*The protected IIHI makes reference to another person (unless such other person is a health-care provider) and a licensed health-care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person.
- \*The request for access is made by the individual's personal representative and a licensed health-care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

Some information maintained by Cass County is not used to make health-care decisions, such as management information systems that are used for quality control or peer review analysis. In accordance with the privacy regulations, Cass County is not required to grant an individual access to protected IIHI maintained in these types of information systems.

Cass County will provide upon request, a six (6) year accounting of disclosures made of the individual's IIHI, except for disclosures:

- \*To carry out treatment, payment or health-care operations;
- \*To the individual data subject;
- \*To facility directories or to persons involved in the individual's care or other notification purposes [45 CFR 164.510(b)];
- \*For national security or intelligence purposes;
- \*To corrections officials or law enforcement personnel when the individual is in custody [45 CFR 164.512(k)(5)]; or
- \*Which were made before the compliance date.

In certain circumstances involving health oversight agencies or law enforcement agencies, Cass County may temporarily suspend the individual's right to receive an accounting of disclosures.

Cass County will permit an individual to request that Cass County amend IIHI. Cass County will require that the request be in writing and that a reason be stated for the amendment. Cass County will so inform any individual of this expectation. All requests to amend IIHI data should be sent to the County Coordinator. Cass County will have up to sixty (60) calendar days to act on the request. One thirty (30) day extension is allowed. The subject of the data's written request will become a part of any case file maintained on the subject.

If Cass County decides to accept an amendment, Cass County will:

- \*Make the appropriate amendment to the protected IIHI or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
- \*Timely informing the individual that the amendment is accepted. Cass County will obtain agreement from the individual to allow Cass County to share the amendment with individuals or entities identified by the individual and Cass County.
- \*Make reasonable efforts to inform and provide the amendment within a reasonable time to: a) persons identified by the individual as having received protected IIHI about the individual and needing the amendment; and b) persons, including business associates that Cass County knows have the

protected IIHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

If Cass County denies all or a part of the requested amendment, Cass County will:

- \*Provide the individual with a timely, written denial. The denial will use plain language and contain: a) the basis for the denial; b) the individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement; c) a statement that, if the individual does not submit a statement of disagreement, the individual may request that Cass County provide the individual's request for amendment and the denial with any future disclosures of the protected IIHI that is the subject of the amendment; and d) a description of how the individual may complain to Cass County or to the Office of Civil Rights.
- \*Permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such agreement.
- \*Prepare a written rebuttal to the individual's statement of disagreement.
- \*Identify the record or protected IIHI in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, Cass County's denial of the request, the individual's statement of disagreement, if any, and Cass County's rebuttal, if any, to the designated record set.
- \*If the individual has submitted a statement of disagreement, Cass County must include the material appended, or an accurate summary of any such information, with any subsequent disclosure of the protected IIHI to which the disagreement relates.

If Cass County is informed by another covered entity of an amendment to an individual's IIHI, Cass County will amend the protected IIHI in designated record sets. Amendments will be made in a reasonable time period, as expeditiously as possible.

**Business Associate Relationships and Amending Business Associate Contracts or Agreements:** A "business associate" is a person or entity who is not a member of Cass County's workforce and who performs a function for Cass County which requires it to use, disclose, create, or receive IIHI. Cass County may disclose IIHI to another entity if it receives satisfactory assurances, provided in a written contract, that the business associate will appropriately safeguard the IIHI. If Cass County and business associate are both governmental entities, a memorandum of agreement will provide satisfactory assurances.

The requirement for business associates does not apply to:

- \*Disclosures made to a provider for treatment;
- \*Disclosures made to a health-plan sponsor; and
- \*Use or disclosures by a health plan that is a government program providing public benefits, if eligibility for, or enrollment in, the health plan is determined by an agency other than the agency administering the health plan, or if the protected IIHI used to determine enrollment or eligibility in the health plan is collected by an agency other than the agency administering the health plan, and such activity is authorized by law, with respect to the collection and sharing of IIHI for the performance of such functions by the health plan and the agency other than the agency administering the health plan.

A contract or other written arrangement will provide satisfactory assurances to Cass County that the business associate will comply with HIPAA requirements necessary to protect the protected IIHI shared by Cass County. The contract or other written arrangement will establish permitted and required uses and disclosures and will also require the business associate to:

- \*Appropriately safeguard the IIHI;
- \*Report any misuse of IIHI;
- \*Secure satisfactory assurances from any subcontractor;
- \*Grant individuals access and ability to amend their IIHI;
- \*Make available an accounting of disclosures;
- \*Release applicable records to Cass County, if requested; and
- \*Upon termination, return or destroy all IIHI.

The contract or other written arrangement will authorize termination if the business associate violates its terms. If Cass County knows of a pattern of non-compliance with HIPAA by the business associates, Cass County realizes it will be found to be non-compliant unless Cass County took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful:

- \*Terminate the contract or arrangement, if feasible; or
- \*If termination is not feasible, report the problem to the Privacy Officer.

**Verification Policies:** Before disclosing IIHI, Cass County will verify the identity of the person requesting the IIHI and the authority of that person to have access. Cass County may rely on written statements, if such reliance is reasonable. For public officials, Cass County may rely on an identification badge or a letter written on government letterhead. Cass County will treat a personal representative as the individual for purposes of the privacy regulations:

- \*A personal representative is someone who has, under applicable law, the authority to act on behalf of an individual in making decisions related to health care.
- \*Cass County will abide by special provisions for unemancipated minors, deceased individuals, and abuse-neglect and endangerment situations.

Cass County will accommodate all reasonable requests from individuals to receive communication of protected IIHI by alternative means or at an alternative location, provided the individual clearly states that disclosure of all or part of that information could endanger the individual.

Cass County will not retaliate against any person for exercising a right under the HIPAA privacy regulations, or for filing a complaint, participating in an investigation, or opposing any lawful act relating to the privacy regulations.

Cass County will reasonably safeguard protected IIHI from any intentional or unintentional use or disclosure that is in violation of the HIPAA privacy standards. Records stored in Cass County will be kept secure at all times, and IIHI will not be stored or kept in unsecured areas.

**Training:** Cass County will train all members of its workforce in the policies and procedures adopted by Cass County necessary to comply with the HIPAA privacy regulations. Department staff will receive initial training at the time of implementation of the privacy regulations. Additional training will be provided to each new member of Cass County's work force at the time of hire, and each member of the workforce whose functions are affected by a material change in the required policies or procedures.

Cass County will apply appropriate disciplinary sanctions to employees who fail to comply with Cass County's privacy policies or procedures or who fail to comply with the HIPAA privacy regulations.