

LIBERTY Dental Plan Inc.

Policies & Procedures: **HIPAA CONFIDENTIALITY AND PRIVACY GLOBAL POLICY**

☐ DESKTOP ☒ COMMERCIAL ☒ MEDICAID ☒ MEDICARE

Responsible Department:
Regulatory Affairs & Compliance

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Approved By:
John Carvelli
Executive Vice President



Richard Hague, DMD
Dental Director



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PURPOSE/SCOPE:

With the advent of new, faster and more efficient means of communications between health plans, hospitals and doctors through Electronic Data Interchange (EDI) concerns have been raised about ensuring that member information remains confidential and the member's privacy is protected. LIBERTY Dental Plan shares these concerns. Furthermore, LIBERTY Dental Plan is committed to ensuring that member-identifiable information or data is only reviewed by the professionals who treat members, review and study the quality of care members receive and those who pay for and administer the services received.

LIBERTY Dental Plan is always striving to meet the latest standards and improve the security of confidentiality-protection systems. In addition to adhering to state and federal laws and regulations pertaining to confidentiality of individually identifiable information, LIBERTY Dental Plan utilizes the National Committee on Quality Assurance standards throughout the organization.

This policy identifies for staff members; contracted providers and personnel and agents of LIBERTY Dental Plan, the policy and procedures to adhere to when handling individually-identifiable member material, data or information.

POLICY:

LIBERTY Dental Plan and LIBERTY Dental Plan Dental staff will comply with the provisions of the Confidentiality of Medical Information Act, Confidentiality of Medical Records Act –amended 1999, and any other relevant Federal such as “Standards for Privacy of Individually Identifiable Health Information (45 Code of Federal Regulations part 160) or other State statutes, when releasing any portion of a member's medical information to any party outside of LIBERTY Dental Plan, including to the member.

LIBERTY Dental Plan and LIBERTY Dental Plan Dental staff will strive to protect the privacy of LIBERTY Dental Plan members by maintaining strict compliance with rules governing the release, exchange and disposal of member individually-identifiable information.

DEFINITIONS:

“Member individually-identifiable materials, information or data” means any document in physical (hard copy) or in electronic form which displays numbers, names, conditions, identification codes and data that would permit persons unrelated to member treatment, quality of care studies and payment and administration of health care services, to identify the LIBERTY Dental Plan member.

“Member’s Dental Information” For the purpose of this policy/procedure, ‘Dental information’ is defined as any individually identifiable information in the possession of or derived from a provider of health care regarding a member’s medical history, mental or physical condition, diagnosis, or treatment.

OUTLINE OF POLICY:

- I. Protection of Member Privacy Confidentiality Process
- II. Member Access to Records
- III. Exceptions to Requiring Member Consent
- IV. Need For Member’s Special Consent
- V. Use of Measurement Data
- VI. Provider and Practitioner Contracts
- VII. Data Shared With Employers
- VIII. Opportunity to Deny or Consent to Release of Personal Information
- IX. Communication of Policies & Procedures Regarding Release/Access of Dental Information to Members and Providers
- X. LIBERTY Dental Plan Internal review process - Corporate Compliance Committee, Policy Subcommittee & Quality Management Improvement Committee
- XI. LIBERTY Dental Plan Internal Review Process

PROCESS/PROCEDURE:

Dental information regarding a member may only be released after LIBERTY Dental Plan has obtained appropriate prior written authorization from the member or the member’s parent/legal guardian/conservator, or a valid court order or court-authorized subpoena requesting such records has been received by the company. ‘Appropriate written authorization’ means permission granted in accordance with Section 56.11 or 56.21 of the Confidentiality of Medical Information Act.

- The member's name, address, age, and sex
- A general description of his/her reason for treatment, such as whether an injury, illness, etc., and the general nature of the condition
- The general condition of the member (i.e. stable, not stable)
- Any information that is not medical information.

I. Protection of Member Privacy Confidentiality Process

Within LIBERTY Dental Plan administrative functions:

LIBERTY Dental Plan will monitor/evaluate its processes for maintaining all confidential information, including its collection, use and disclosure, by use of an internal review process consisting of:

- The Corporate Compliance Committee
- The Policy Subcommittee
- The Quality Management Improvement Committee

These will be responsible for the following:

- A. The ongoing review of confidentiality policies and procedures;
- B. The oversight of the development of corrective action plans; and
- C. The responsibility for summary reporting to appropriate committees of senior management.

LIBERTY Dental Plan will maintain the confidentiality of all confidential information, including but not limited to: member-identifiable, provider-specific, business-transaction and information contained within all databases through:

- A. The adoption, implementation, and on going review/revision of policy, and
- B. Any departmental specific policy and procedure.

Release of any member-identifiable, provider-specific, or business transaction information by the organization will be:

- A. Subject to the criteria set forth in this policy and/or
- B. In conjunction with the expressed written consent of the member or the legal guardian; excepting of those situations where such release of information is required by law or contract.

Member identifiable information or dental records, obtained for claims processing or benefit appeals, will be:

- A. Stamped “Confidential” and forwarded or transported through the organization in a confidential manner (e.g., special confidential envelope, direct delivery to recipient, etc.)
- B. Protected in locked files at the end of a business day.
- C. Accessed only by employees as necessary to conduct appropriate processing.
- D. Redacted to remove member/practitioner identifiers, whenever information is used for demonstration purposes.
- E. Password protected for all systems data and laptop computer data.
- F. Archived in accordance with all applicable federal, state, etc. laws.
- G. Shredded when such materials are no longer needed.

Employee Efforts:

Human Resources will:

- Conduct reference/background checks on all potential employees prior to completion of the formal hiring process.
- Check the OIG/GSA monitoring list at hire and on an annual basis to ensure that no employees are in violation. The Human Resources Department maintains a checklist on every employee and keeps an individual note in each employee’s human resource file
- Provide a review of this Confidentiality Policy at the Employee Orientation in addition to the structured Orientation Program discussed below.

All employees will:

A. Attend a structured Orientation Program (upon hire), which includes:

- 1. All aspects of maintaining confidentiality of all sensitive information, along with
- 2. Specific instructions on the use and importance of Computer Password Security.

B. Have this information reinforced in:

- 1. Periodic additional associate training sessions
- 2. Newsletter features, and
- 3. The Employee Handbook (which is provided when hired and updated as needed thereafter).

C. Receive a picture-identifiable personal ID card (with instructions regarding proper use).

D. All employees and users are instructed to treat all identifiable health care data as confidential upon employment. In addition, they are required to sign a confidentiality statement acknowledging the following:

1. The user's understanding of data confidentiality.
2. The user's commitment to assume responsibility for the data they access.
3. The user's commitment to report any security violations.
4. The user's commitment to use data only as permitted for the proper performance of his or her job, subject to sanctions or dismissal.

On an annual basis, LIBERTY Dental Plan managers and/or supervisors provide employees with continuing education on data confidentiality through the employee appraisal process. Employees are required to renew their confidentiality statement at this time. This is accomplished through a signature acknowledgment on the employee's annual performance appraisal form. LIBERTY Dental Plan managers are accountable for compliance with these standards.

Information Systems:

Appropriate access to LIBERTY Dental Plan information systems, claims information, and enrollment information is ensured. Access to the information system is only available to those engaged in quality improvement, health services administration and health services research activities and information systems who have complied with the following security requirements:

- A. The user has received authorization for access from the Department Director or his or her designee, and IS Data Security has authenticated the request.
- B. The user has completed training on the proper use of the Information System.
- C. The user has completed training on maintaining data confidentiality.
- D. The user has signed a confidentiality statement.

Log-in names and passwords for access are required. All users of LIBERTY Dental Plan Information System are required to use unique log-in names and passwords. Log-in names and passwords constitute an electronic signature and therefore are not to be shared with others.

- A. A user's account on the Information System will be frozen if there are more than a predetermined number of unsuccessful log-in attempts. Once a user's account is frozen, he or she is required to contact the IS Department and verify identification to reactivate the account.
- B. Users are also required to change their passwords on a regular basis, as directed by LIBERTY Dental Plan's Information Systems Department.

User classification and data classes. Information System users are classified according to their role and level of access to identifiable health care data that they require to accomplish their jobs.

Entry into member records. LIBERTY Dental Plan's Information System maintains an electronic record of the users who have accessed specific identifiable health care data. Inappropriate entry into member records is cause for dismissal and may give rise to criminal and civil penalties.

Identifiable health care data of employees, dentists, and celebrities. Recognizing the sensitive nature of maintaining the records of LIBERTY Dental Plan's employees and their families, dentists and their families, and persons prominent in business, politics, sports, or entertainment, we have implemented appropriate safeguards to protect their privacy. The identifiable health care data of such individuals is flagged by the Information System to limit access of their dental record. Designated staffs in the Operations and Quality Management departments handle these member inquiries regarding their health care.

Secondary use of identifiable health care data. LIBERTY Dental Plan maintains policies controlling secondary disclosures of identifiable health care data. Such secondary disclosures include data requests from government regulatory agencies, medical researchers, employers, contracted vendors, educational institutions, social welfare agencies, and attorneys. LIBERTY Dental Plan has outlined procedures to deal with these types of requests. See policies developed by LIBERTY Dental Plan's Disease Management for details. The Dental Director or designee is required to review all requests before the release of data. Access is restricted to non-identifiable health care data.

Faxing dental records. Security is considered when faxing medical records. The fax number should be reconfirmed before transmitting. Records containing information about members with protected diagnoses are not to be faxed, if possible. If misdirected, the recipient is instructed to destroy the information. The facsimile transmission cover sheet contains language to identify the information as privileged and confidential.

Data Security Manager. The Information Technical Specialist (IT) shall serve as Data Security Manager unless this function is delegated to a dedicated Data Security Chief. This individual is responsible for coordinating, supporting, monitoring and integrating all aspects of data security for the System. He/she consults with departments about situations not covered by existing policies and procedures and chairs an Internal Review Panel as appropriate.

Organizations LIBERTY Dental Plan contracts with for clinical or administrative services:

Internal or external participants in any organization business endeavors, community initiatives, etc. are required to sign confidentiality Agreement Statement that is to be retained on file. The statement will document the following:

1. The user's understanding of data confidentiality.
2. The user's commitment to assume responsibility for the data they access.
3. The user's commitment to report any security violations.
4. The user's commitment to use data only as permitted for the proper performance of his or her job, subject to sanctions or dismissal.

With employers:

A current, valid authorization shall be provided before information is released for employer requests for access to or release of information from dental records, except as required under workers' compensation.

For research or measurement purposes:

LIBERTY Dental Plan will obtain verification of adherence to all confidentiality policies and procedures. This will be obtained prior to any oversight surveys conducted by external organizations.

In the treatment setting:

All dental records and other personal health information will be kept in a secure place. Measures will be taken to ensure that all documents are covered (i.e., have coversheets, file folders containing medical records will be kept closed when document is not in use) to prevent access to confidential materials. Policies governing the maintenance of confidentiality are provided in the Provider Manual, and contracts with providers contain language that states LIBERTY Dental Plan's expectations about confidentiality.

Use and protection of data for quality measurement:

Quality Management Improvement Committee (QMIC) activities rely on confidential information. Whether it is obtained through an internal source, an external source or by regulatory/accrediting bodies, it will:

- A. Be housed within a secure area of the appropriate department (i.e., limited access, locked, etc.)
- B. Have all summary data, reported to a committee, aggregated (i.e., all identifiers removed).

Emergency Requests:

It is recognized that emergency situations arise that require the immediate exchange of information by telephone or facsimile transmission. As a safeguard, the employee shall take the following precautions:

- Obtain identifying information from the caller (e.g., health care provider name, address, telephone number).
- Indicate that a return call will be made after the information has been verified.
- Verify the identity of the caller by reviewing resource directories for clinics, and dental practitioners.
- Review the dental record for any prohibition of release of information; if present, refer the request to risk management.
- Return the call, providing limited information.

- Complete the appropriate form, noting the following information:
 - date and time of request
 - member/client identification
 - caller information/identification
 - reason given by caller to classify situation as emergency
 - information released verbally
 - employee giving information
 - employee receiving information

Record Preparation:

The record shall be reviewed, and any material not specifically requested and approved for release shall be removed, including material received from other health care facilities. A copy of the record shall be made for review. Access to the original shall not be permitted in order to prevent tampering or inadvertent destruction or loss of any part of the record.

Review by Member/Client:

The review shall be conducted in the presence of the release of information coordinator unless the dentist indicates that he or she will review the material with the member/client. At no time shall a member/client be permitted to review material on site without direct supervision by a facility employee. No interpretation of the meaning of an entry or of the care shall be given by an employee who is not a credentialed direct member care provider. The member/client shall be encouraged to discuss such questions with the attending dentist.

II. Member Access to Records

As permitted and required by state and federal laws and regulations, members/clients shall be permitted access to information in their dental record, including the right to obtain a copy of a part of all of the record. Exception: The only exception to this provision is the specific contraindication by the attending dentist. Such contraindication shall be noted in the dental record, with supporting reasons. This statement shall specifically include that “it is not in the best interest of the member/client” to have access.

Request for Access:

The request for access form shall be completed by the member/client. Members may obtain a copy of their dental record within five (5) days of a written request and after completing an ‘Authorization to Release Dental Information’ form or else submits a written letter requesting a copy from LIBERTY Dental Plan Member Services Department. Appropriate verification of identity as well as an ‘Acknowledgment of Receipt of Dental Records’ is required.

When a signed 'Authorization for Release of Dental Information' is required, the following information on this form must be completed by the member or legal representative:

- A. Name and address of the institution that is to release the information.
- B. Name and address of the individual or institution that is to receive the information.
- C. Member's full name, address, date of birth, social security number.
- D. Specific date or conditions under which the Release will expire unless revoked in writing before the date of expiration.
- E. Date that the release is signed by the requesting party.
- F. Extent or specific nature of information to be released.
- G. Specific uses allowed, and any specific limitation of use by the persons or entities authorized to receive the medical information.
- H. Specific dates of information to be released.
- I. Signature of the member, legal representative, (or beneficiary/personal representative of a deceased member when a valid death certificate is attached), and date signed.
- J. A statement that the member understands that he/she is entitled to receive a copy of the 'Authorization to Release Dental Information'.

Explanation to Member/Client:

The process for access shall be shared with the member/client at the time of the request. This briefing shall include the necessity of dentist approval and facility's process of obtaining it, and charges associated with making the record available and copying it.

Tracking Log:

An entry shall be made in the release of information tracking log showing the name of the member/client, date of request, date of dentist approval, and date of actual review by member/client.

Dentist Approval/Disapproval:

The approval of the attending dentist shall be obtained. If the attending dentist is no longer a participating provider, the dental director's approval shall be sought. This approval shall be obtained by forwarding the member request for access form to the appropriate dentist.

- **Disapproval.** The dentist shall complete, sign, and date the form showing the reason for disapproval, including the statement that it is not in the member's/client's best interest to have access. This form shall be filed in the dental record and retained according to record retention provisions. The member/client shall be notified in writing by the dentist, and a copy of this notification shall be made part of the dental record.

- **Approval.** The dentist shall complete, sign, and date the form indicating approval. The form shall be returned to the release of information coordinator and shall be filed in the dental record and retained according to record retention provisions. The release of information coordinator shall arrange an appointment with the member/client.

Telephone Inquiries:

Information shall not be released. The caller shall be instructed to make the request in writing and provide the necessary authorization with the written request. Assistance shall be given to callers to guide them in complying with the details of a proper authorization. Exception: Emergency situations will be processed as described below.

In-person Inquiries:

Oral requests made in person shall not be honored. Assistance in providing a written request and necessary authorization shall be given.

Reasonable Access/Access by Appointments:

To provide reasonable and timely access, members/clients may review the record at a mutually agreeable time during normal workdays: Monday through Friday, 8 a.m. to 5 p.m. As far as possible, the appointment shall be made within three workdays of approval.

Reasonable Fees:

A bill for access and copying shall be prepared and presented to the member/client, who shall make the necessary payment by check or money order made out to the facility. A member/client may obtain a copy of part or all of the record.

III. Exceptions to Requiring Member Consent

Specific, written member/legal representative authorization is ***not required*** prior to release of the following dental information by Corporate Dental Records Department in the following cases:

- A. True health care emergencies. The need to know outweighs privacy and confidentiality considerations.
- B. Unusual, rare circumstances where serving the common good outweighs privacy and confidentiality consideration. These requests shall be referred to the chief administrative officer of the facility. Such requests will not be processed by dental record personnel without the explicit, written directive of the CEO or designee.
- C. Release of non-confidential information.
- D. Conduct of facility's internal affairs. Information shall be made available on a need-to-know basis for such activities as quality assurance review, risk management review, internal audit processes, and activities associated with compliance with requirements of regulatory and accrediting agencies.

- E. Direct transfer of member/client to another network provider where information must be available at the time of transfer. It is usually possible to obtain an updated consent as part of the transfer arrangement, and it is desirable to do so.
- F. Direct transfer of member/client to the care of member/client-designated attending dentist.
- G. Third-party payers for the purpose of evaluating a member's application for coverage benefits.
 - 1. Plans that contract with the facility to provide services for eligible members. Plan members sign an agreement with the third-party payer for such release of supporting information. The facility's legal counsel shall provide the dental record department with specific listings of such contractual arrangements. The listing shall be attached to these policies and updated at least annually.

Current law allows release of dental records to the following parties without specific member/parent/legal guardian/conservator authorization. Written request must be received by the Corporate Dental Records Department, who will process such records and perform the release of records to the following parties:

- A. Peer review organization reviewers (may be released)
- B. Public Health Departments (may be released)
- C. Licensing or accreditation surveyors (may be released)
- D. County coroner (may be released)
- E. Claims payers, only as is sufficient to verify that the billed services were in fact provided. (may be released)
- F. To law enforcement agencies pursuant to a lawfully issued search warrant, and only upon advice and consent of the LIBERTY Dental Plan Legal Affairs or Risk Management Departments. (MUST be released)
- G. Subpoena duces tecum, only upon advice and consent of the LIBERTY Dental Plan Legal Affairs or Risk Management Departments. (MUST be released)
- H. Arbitration order, only upon advice and consent of the LIBERTY Dental Plan Legal Affairs or Risk Management Departments. (MUST be released)
- I. When otherwise specifically required by law.

IV. Need For Member's Special Consent

Specific, written member/legal representative authorization **MUST BE OBTAINED PRIOR TO RELEASE** of the following dental information to an outside, third party, except for those identified above:

- A. Request by employer for purposes other than paying a claim or managing a Worker's Compensation case.

V. Use of Measurement Data

Data that is used to measure member satisfaction, administrative quality improvement and health services delivery is reported to government agencies or research institutions which need the data for planning, budgetary or academic studies are provided in an anonymous format to protect the identity of the member.

VI. Provider Contracts

LIBERTY Dental Plan contracts with providers explicitly state expectations about the confidentiality of member information and records. Confidentiality and release of information policies are also contained in the Provider Manual.

Participating Providers shall maintain the confidentiality of all Member dental records and related treatment information in accordance with State and Federal Law. Providers shall establish procedures and safeguards so that no individually identifiable information pertaining to Members contained in its Participating Providers' records shall be used or disclosed by Participating Providers or their agents or employees other than for purposes directly connected with the administration of the LIBERTY Dental Plan.

Participating Providers shall maintain all member dental records relating to Covered Services provided to Members, in such form and containing such information as required by the QM Program, State and Federal Law, and NCQA standards. Dental records shall be maintained in a manner that is current, detailed, organized and permits effective member care and quality review by LIBERTY Dental Plan pursuant to the QM Program. Dental records shall be maintained in a form and physical location which is accessible to LIBERTY Dental Plan. Upon request and within the time frame requested, the Participating Providers shall provide to LIBERTY Dental Plan, at the Participating Provider's expense, copies of Member dental records for purposes of conducting quality assurance, case management and utilization reviews, credentialing and peer review, claims processing, verification and payment, resolving Member grievances and appeals and other activities reasonably necessary for the proper administration of the LIBERTY Dental Plan consistent with State and Federal Law. If the Participating Providers do not provide copies of Member dental records to LIBERTY Dental Plan within the time frame requested, the Participating Providers shall allow LIBERTY Dental Plan immediate access to such dental records for onsite copying and shall reimburse LIBERTY Dental Plan for the actual copying expense. The Participating Providers shall maintain the confidentiality of all Member dental records and treatment information in accordance with State and Federal Law. Dental records shall be retained by the Participating Providers for at least ten (10) years following the provision of Covered Services and as required by State and Federal Law. The provisions of this Section shall survive termination of this Agreement for the period of time required by State and Federal Law.

The Participating Providers agree to perform their duties under this Agreement in accordance with the administrative and operating guidelines, policies and procedures set forth in the Provider Manual and State and Federal Law. LIBERTY Dental Plan shall be responsible for distributing copies of the Provider Manual, as necessary, to its Participating Providers.

VII. Data Shared With Employers

LIBERTY Dental Plan will ensure that any data shared with employer groups (including self-insured accounts) is not implicitly or explicitly member identifiable, unless specific member authorization is obtained. Under no circumstances will the Member's Social Security Number be shared with employers.

However, written member/legal representative authorization is not required prior to release of the following dental information, Dental information will be made available to a member's employer if a written request is received by the recipient only in the following circumstances:

- 1) LIBERTY Dental Plan has created dental information as a result of employment-related health care services to the member at the specific prior written request and expense of the employer;
- 2) The information being requested is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the member has placed at issue his or her dental history provided that the information is only to be used or disclosed in connection with that proceeding.
- 3) The information describes functional limitations of the member that may entitle him/her to leave from work for dental reasons or limit the member's fitness to perform his or her present job tasks, provided that **no statement of dental cause** is included in the information disclosed.

"Implicit" and "explicit" information/data are defined as follows:

Implicit: Information that is not individually identifiable but could be used to extrapolate the identity of a member from any data or codes present on the document.

Explicit: Information that contains individually identifiable data.

VIII. Opportunity to Deny or Consent to Release of Personal Information

Dental information regarding a member may only be released after LIBERTY Dental Plan has obtained appropriate prior written authorization from the member or the member's parent/legal guardian/conservator, or a valid court order or court-authorized subpoena requesting such records has been received by the company. 'Appropriate written authorization' means permission granted in accordance with Section 56.11 or 56.21 of the Confidentiality of Medical Information Act.

All media requests for dental information must be referred to the LIBERTY Dental Plan President/CEO or the Executive Vice President. Unless there is a specific written request by the member to the contrary, the Confidentiality of Medical Information Act allow LIBERTY Dental Plan

to release, at its discretion and only upon an inquiry concerning a specific member and only upon advice and consent of the LIBERTY Dental Plan CEO or the Executive Vice President any of the following general information:

- The member's name, address, age, and sex
- A general description of his/her reason for treatment, such as whether an injury, illness, etc., and the general nature of the condition
- Any information that is not dental information.

IX. Communication of Policies & Practices Regarding Dental Information to Prospective Members

A summary of the "policies and practices" of LIBERTY Dental Plan in regards to dental information is provided to prospective members during our initial marketing presentation.

X. Communication of Policies & Procedures Regarding Release/Access of Medical Information to Members, Practitioners and Providers

LIBERTY Dental Plan will provide members (including prospective members), providers, vendors, delegated entities, and employees with communication:

- A. Of its policies and procedures regarding confidentiality through distribution of materials such as provider manuals, marketing materials, employee handbook, enrollment packets, Explanation of Coverage, etc.;
- B. Of its commitment to protect access to member dental information;
- C. How member dental information is collected, used/disclosed; and
- D. The proper use of member consent forms.

REFERENCE:

STATE	REGULATOR	CITE