



### **HIPAA and ProAssurance**

The ProAssurance Companies, along with our legal counsel, have reviewed the Health Insurance Portability And Accountability Act of 1996, and its implementing regulations (collectively, "HIPAA"). After our review, we have concluded that HIPAA Business Associate Agreements are not required in connection with our provision of medical malpractice insurance to our health care provider clients. While ProAssurance does receive Protected Health Information from its healthcare provider clients for the purpose of obtaining or maintaining medical liability coverage or obtaining the benefits from such insurance, such disclosures are allowed under HIPAA, without a Business Associate Agreement.

Support for this position can be found in guidance posted by the Office of Civil Rights, the governmental entity charged with enforcing the HIPAA Privacy Rule and Security Rules:

The Privacy Rule permits a covered health care provider to disclose information for "health care operations" purposes, subject to certain requirements. Disclosures by a covered health care provider to a professional liability insurer or a similar entity for the purpose of obtaining or maintaining medical liability coverage or for the purpose of obtaining benefits from such insurance, including the reporting of adverse events, fall within "business management and general administrative activities" under the definition of "health care operations." Therefore, a covered health care provider may disclose individually identifiable health information to a professional liability insurer to the same extent as the provider is able to disclose such information for other health care operations purposes. (Added 12/19/2002; Updated 3/14/2006).

Further, the Office of Civil Rights has said that the provision of insurance to a client does not make the insurer the client's business associate. To qualify as a business associate, an insurer must perform a function or activity on behalf of its clients. The Office of Civil Rights takes the position that the activities of an insurer in connection with the issuance of insurance are on its own behalf and not on behalf of the client, and therefore the insurer is not the client's business associate. See 65 Fed. Reg. 82462, 82476 (Dec. 28, 2000).

Although Business Associate Agreements are not necessary, please be aware that ProAssurance complies with all applicable federal and state law regarding confidentiality of records. To the extent that you disagree with our conclusion and the guidance from the Office of Civil Rights, or in the event that a change is made in the HIPAA laws or interpretive guidance through legislative changes, case law, or other official guidance, please print the Health Information Privacy and Security Statement attached below for your files. This Health Information Privacy and Security Statement does not have to be returned to us.

\*\*\* All terms not otherwise defined above shall have the meaning given to them in the HIPAA Privacy and Security Rules.



## HEALTH INFORMATION PRIVACY AND SECURITY STATEMENT

This Privacy and Security Statement (this "Statement") is executed by each of the ProAssurance companies (ProAssurance Indemnity Company, Inc.; ProAssurance Casualty Company; ProAssurance Specialty Insurance Company, Inc., Podiatry Insurance Company of America, PACO Assurance Company, Inc., American Medical Insurance Exchange, and Independent Nevada Doctors Insurance Company) (hereinafter "ProAssurance") in favor of its health care provider clients ("Covered Entity").

### **RECITALS:**

A. ProAssurance provides professional liability insurance to Covered Entity pursuant to an agreement or agreements entered into between ProAssurance and Covered Entity and/or its subsidiaries. Such agreement, as amended, is referred to herein as the "Agreement".

B. While ProAssurance is a professional liability insurer, and as such does not consider itself to be a "Business Associate" as such term is defined in the regulations set forth at 45 C.F.R. Parts 160 and 164 (the "HIPAA Regulations"), to the extent that ProAssurance may be deemed in the future to be a Business Associate, the parties desire to enter into this Statement to clarify their obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the HITECH Act provisions set forth at 42 U.S.C. § 17931 *et seq.* (the "HITECH Act"), the HIPAA Regulations, and other related laws and regulations.

**NOW, THEREFORE**, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **I. DEFINITIONS.**

1.1 "Individual" shall have the same meaning as the term "individual" in the HIPAA Regulations and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.2 "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in the HIPAA Regulations, limited to the Electronic Protected Health Information created, received, maintained, or transmitted by ProAssurance from or on behalf of a Covered Entity.

1.3 "Protected Health Information" shall have the same meaning as the term "protected health information" in the HIPAA Regulations, limited to Protected Health Information created, received, maintained, or transmitted by ProAssurance from or on behalf of Covered Entity.

1.4 Capitalized terms used in this Statement and not otherwise defined herein shall have that meaning given to them in the HIPAA Regulations.

## II. OBLIGATIONS AND ACTIVITIES OF PROASSURANCE

2.1 Confidentiality. ProAssurance agrees to not use or disclose Protected Health Information other than as permitted or required by this Statement or as Required By Law.

2.2 Safeguards. ProAssurance agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Statement. ProAssurance will also comply with the provisions of 45 C.F.R. Part 164, Subpart C of the HIPAA Regulations with respect to Electronic Protected Health Information to prevent any use or disclosure of such information other than as provided by this Statement, which obligation shall include maintaining safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information.

2.3 Mitigation. ProAssurance agrees to mitigate, to the extent practicable, any harmful effect that is known to ProAssurance of a Security Incident, Breach, or use or disclosure of Protected Health Information by ProAssurance in violation of the requirements of this Statement.

2.4 Reporting. To the extent known to or discovered by ProAssurance, ProAssurance agrees to promptly report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Statement, any Security Incident involving Electronic Protected Health Information, and any Breach of Unsecured Protected Health Information. The parties acknowledge and agree that this section constitutes notice by ProAssurance to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on ProAssurance's firewall, port scans, unsuccessful long-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of Electronic Protected Health Information. All reports of Breaches shall be made in compliance with 45 C.F.R. § 164.410.

2.5 Agents and Subcontractors. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), ProAssurance agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of ProAssurance agrees to the same restrictions and conditions that apply through this Agreement to ProAssurance with respect to such information.

2.6 Access and Amendment. ProAssurance agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.524. If the requested Protected Health Information is maintained electronically, ProAssurance agrees to provide a copy of the Protected health Information to Covered Entity in the electronic form and format requested by the Individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual. ProAssurance agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity.

2.7 Books and Records. ProAssurance agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information available to Covered Entity, or to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. If the Secretary requests such access, ProAssurance shall promptly notify Covered Entity and provide Covered Entity with a copy of such request. ProAssurance shall consult and cooperate with Covered Entity concerning the proper response to such request. Notwithstanding the foregoing, nothing in this section shall be deemed to require ProAssurance to waive the attorney-client, accountant-client, or other legal privilege, and nothing in this section shall impose upon Covered Entity any obligation to review ProAssurance's practices, books or records.

2.8 Accounting. ProAssurance agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. ProAssurance agrees to provide to Covered Entity, in a time and manner reasonably designated by Covered Entity, information collected in accordance with this section to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

2.9 Uses and Disclosures Required By Law. Except to the extent prohibited by law, ProAssurance shall immediately notify Covered Entity if it receives a request for disclosure of Protected Health Information with which ProAssurance believes it is Required by Law to comply and disclosure pursuant to which would not otherwise be permitted by this Statement. ProAssurance shall provide Covered Entity with a copy of such request, shall consult and cooperate with Covered Entity concerning the proper response to such request, and shall provide Covered Entity with a copy of any Protected Health Information disclosed pursuant to such request.

2.10 Standard Transactions. To the extent that, under the Agreement, ProAssurance conducts on behalf of a Covered Entity all or part of a Transaction (as defined in 45 C.F.R. Parts 160 and 162 (the "Electronic Transactions Rule")), ProAssurance shall comply with, and shall cause any of its agents or subcontractors to comply with, the Electronic Transactions Rule.

2.11 HITECH Act Compliance. ProAssurance and Covered Entity agree that the provisions of the HITECH Act and its implementing provisions (and any other provisions of HIPAA or the HITECH Act that apply to business associates and that are required to be incorporated by reference in a business associate agreement) are incorporated into this Statement in their entirety.

### III.

#### PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY PROASSURANCE

3.1 Use or Disclosure to Provide Services Under the Agreement. Except as otherwise limited in this Statement, ProAssurance may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the applicable Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity. ProAssurance represents that the Protected Health Information requested, used, or disclosed by ProAssurance shall be the minimum amount necessary to carry out the purposes of the Agreement. ProAssurance will limit its uses and disclosures of, and requests for, Protected Information (i) when practical, to the information making up a Limited Data Set; and (ii) in all other cases subject to the requirements of 45 C.F.R. § 164.502(b), to the minimum amount of Protected Health Information necessary to accomplish the intended purpose of the use, disclosure, or request.

3.2 Use or Disclosure for ProAssurance's Management and Administration. Except as otherwise limited in this Statement, ProAssurance may use Protected Health Information for the proper management and administration of ProAssurance or to carry out the legal responsibilities of ProAssurance. Except as otherwise limited in this Statement, ProAssurance may disclose Protected Health Information for the proper management and administration of ProAssurance, provided that such disclosures are Required By Law, or ProAssurance obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the ProAssurance of any instances of which it is aware in which the confidentiality of the information has been breached.

3.3 Use or Disclosure to Provide Data Aggregation Services. Except as otherwise limited in this Statement, ProAssurance may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

3.4 Violations of Law. ProAssurance may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent permitted by law, ProAssurance shall promptly notify Covered Entity in the event that ProAssurance makes such a report.

3.5 De-Identification of Protected Health Information. ProAssurance may de-identify any and all Protected Health Information provided that de-identification conforms to the requirements of the HIPAA Regulations. The parties acknowledge and agree that de-identified data is not subject to the terms of this Statement.

3.6 Limited Data Sets. ProAssurance may use any and all Protected Health Information in order to create Limited Data Sets and may use or disclose such Limited Data Sets only as permitted by 45 C.F.R. § 164.514(e). Except as set forth in this section, the conditions and restrictions contained herein on ProAssurance's use and disclosure of Protected Health Information apply to ProAssurance's use and disclosure of Protected Health Information contained in such Limited Data Sets. Further, ProAssurance agrees that it shall not identify the information contained in such Limited Data Sets or contact the Individuals who are the subject of the Protected Health Information contained in such Limited Data Sets, except as otherwise permitted or required by this Statement.

3.7 Covered Entity's Obligations. To the extent ProAssurance is to carry out an obligation of a Covered Entity under HIPAA Regulations, ProAssurance shall comply with the requirements of the HIPAA Regulations that apply to the Covered Entity in the performance of such obligation.

#### **IV. RESPONSIBILITIES OF COVERED ENTITY**

4.1 Notice of Privacy Practices. Covered Entity shall notify ProAssurance of any limitation(s) in the notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ProAssurance's use or disclosure of Protected Health Information.

4.2 Change or Revocation of Permission. Covered Entity shall notify ProAssurance of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect ProAssurance's use or disclosure of Protected Health Information.

4.3 Restrictions on Use or Disclosure. Covered Entity shall notify ProAssurance of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ProAssurance's use or disclosure of Protected Health Information.

4.4 Permissible Requests. Covered Entity shall not request ProAssurance to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity, except that ProAssurance may use or disclose Protected Health Information for the purposes described in this Statement.

#### **V. TERM AND TERMINATION**

5.1 Term. The Term of this Statement shall be effective as of the later of (i) the date of the Agreement, or (ii) the date on which ProAssurance is required to have such a Statement with Covered Entity, and shall expire when all of the Protected Health Information is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in Section 5.3 of this Statement.

## 5.2 Termination.

(a) Upon Covered Entity's knowledge of a material breach by ProAssurance, Covered Entity may either: (i) provide an opportunity for ProAssurance to cure the breach or end the violation and terminate, without penalty, this Statement and any Agreement if ProAssurance does not cure the breach or end the violation within the time specified by Covered Entity; or (ii) immediately terminate, without penalty, this Statement and any Agreement if ProAssurance has breached a material term of this Statement and cure is not possible.

(b) Upon ProAssurance's knowledge of a material breach by Covered Entity, ProAssurance may either: (i) provide an opportunity for Covered Entity to cure the breach or end the violation and terminate, without penalty, this Statement and any Agreement if Covered Entity does not cure the breach or end the violation within the time specified by ProAssurance; or (ii) immediately terminate, without penalty, this Statement and any Agreement if Covered Entity has breached a material term of this Statement and cure is not possible.

5.3 Return or Destruction of Protected Health Information Upon Termination. Except as provided below, upon termination for any reason of this Statement or all of the Agreements ProAssurance shall return or destroy all Protected Health Information, other than Protected Health Information which is stored in documents or paper or electronic records which, documents or records, are the property of ProAssurance pursuant to the Agreement. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of ProAssurance. ProAssurance shall retain no copies of the Protected Health Information. In the event that ProAssurance determines that returning or destroying the Protected Health Information is infeasible, ProAssurance shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. ProAssurance shall extend the protections of this Statement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as ProAssurance maintains such Protected Health Information.

## **VI. MODIFICATIONS TO COMPLY WITH STANDARDS**

In the event that additional standards are promulgated under HIPAA, or any existing standards are amended, ProAssurance shall promptly amend this Statement to enable Covered Entity to satisfy its obligations under such additional or amended standard(s).

## **VII. MISCELLANEOUS**

7.1 Regulatory References. A reference in this Statement to a section in the HIPAA Regulations or any other standard promulgated under HIPAA means the section as in effect or as amended.

7.2 Survival. The respective rights and obligations of ProAssurance under Section 5.3 and Section 7.3 of this Statement shall survive the termination of this Statement. The respective rights and obligations of ProAssurance under Section 2.8 of this Statement shall survive the termination or expiration of this Statement for six (6) years from the date of the last disclosure of Protected Health Information by ProAssurance for which Covered Entity is required to account under 45 C.F.R. § 164.528.

7.3 Injunctive Relief. ProAssurance understands and acknowledges that any use or disclosure of Protected Health Information in violation of this Statement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further use, disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. ProAssurance expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

7.4 Amendment. This Statement may be amended only by ProAssurance.

7.5 Interpretation. The headings of sections in this Statement are for reference only and shall not affect the meaning of this Statement. Any ambiguity in this Statement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations. In the event that a provision of this Statement conflicts with a provision of the Agreement, the provision of this Statement shall control, except to the extent that the Agreement places additional restrictions on ProAssurance's use and disclosure of Protected Health Information. Otherwise, this Statement shall be construed under, and in accordance with, the terms of the Agreement. This Statement shall be interpreted by and construed in accordance with the laws of the State of Alabama.

7.6 No Third Party Beneficiaries. Nothing express or implied in this Statement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

7.7 Entire Agreement. With respect to the subject matter of this Statement, this Statement supersedes all previous agreements and constitutes the entire agreement between the parties.

7.8 Disclaimer. **PLEASE BE ADVISED THIS HEALTH INFORMATION STATEMENT IS ONLY FOR USE IN THE EVENT THE OFFICE FOR CIVIL RIGHTS OR OTHER GOVERNMENTAL OR LEGAL BODY HAS CONCLUDED THAT SUCH AN AGREEMENT IS REQUIRED FOR PROFESSIONAL LIABILITY INSURERS, AND SHALL NOT BE EFFECTIVE UNTIL SUCH TIME.**

A handwritten signature in blue ink, appearing to read "W. Stancil Starnes".

W. Stancil Starnes  
Chairman