

Memorandum of Understanding
Between
Department of Transformation and Shared Services, Division of Employee Benefits
and
Bureau of Legislative Research
for
Employee Health Benefits Consulting Services Agreement
December 16, 2022 to June 30, 2024
And As Extended

This Memorandum of Understanding (“MOU”) between the Department of Transformation and Shared Services, Division of Employee Benefits (“EBD”) and the Bureau of Legislative Research (“BLR”) (also referred to as “the parties”) is related to the work to be performed by The Segal Group, Inc. (the “Consultant”) for the benefit of the Arkansas General Assembly under the Consultant Services Agreement by and between the BLR and the Consultant (the “Agreement”).

This MOU addresses the conditions under which EBD will disclose and BLR and the Consultant may obtain, use, reuse, and disclose data files requested for use by the Consultant for its work for the General Assembly under the Agreement. The terms of this MOU may be changed only by a written amendment to the MOU agreed to and signed by both Parties. This MOU is effective for the period of December 16, 2022 through June 30, 2024, the term of the Agreement. It may be extended upon written agreement of both Parties. The number of extensions is not limited.

WHEREAS, EBD is an executive branch agency of the State of Arkansas and custodian of the records related to the State and Public School Life and Health Insurance Program and related employee health benefit plans;

WHEREAS, BLR is a legislative branch agency of the State of Arkansas providing legal, fiscal, staffing, research, and other services to and on behalf of the Arkansas General Assembly, its committees, and members;

WHEREAS, during the 2022 Fiscal Session, the Arkansas General Assembly passed Act 112, which imposed the following requirement related to bills concerning health benefit plans: “A bill filed in the House of Representatives or the Senate that will impose a new or increased cost obligation for health benefit plans, including pharmacy benefits, on an entity of the state shall: (A) Have a fiscal impact statement attached to the bill prepared and filed with the chair of the committee to which the bill is referred; and (B) Not be taken up by the committee to which the bill is referred until a fiscal impact statement is provided to the chair of the committee.”;

WHEREAS, Act 112 of 2022 further provided that “[t]he services of actuaries may be obtained in evaluating the respective bills and preparing the fiscal impact statement.”;

WHEREAS, BLR, under the authority of the Legislative Council, has entered into the Agreement with the Consultant to provide the Arkansas General Assembly and its members and committees access to actuarial studies and cost estimates of proposed legislation concerning employee health benefits plans provided by entities of the state, as required under Act 112;

WHEREAS, the fiscal impact statements require Consultant to be provided access to different data elements specific to the various proposed bills, which is data held by EBD or its vendors;

WHEREAS, the Legislative Council and its employees, agents, contractors, and persons to whom it has granted authority, are a health oversight agency as defined by the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”); and BLR is an agency of the Legislative Council. In 45 C.F.R. § 164-501, “*Health oversight agency*’ means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant;”

WHEREAS, under HIPAA, 45 C.F.R. § 164.512 (d)(1) provides, “A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- (i) The health care system;
- (ii) Government benefit programs for which health information is relevant to beneficiary eligibility; or
- (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards”; and

WHEREAS, under the HIPAA Privacy Rule, 45 C.F.R. § 164.501, a covered entity may use and disclose protected health information for health care operations activities, which includes business planning and development and business management and general administrative activities.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the Parties agree as follows:

1. EBD acknowledges the need for prompt production of the fiscal impact statements by Consultant due to the time constraints of the legislative session, including the fifteenth calendar day bill filing deadline imposed upon employee health benefit plan legislation in Act 112-~~and agrees to provide the requested data to the Consultant upon its request within one (1) business day of receiving the request.~~

2. EBD agrees to provide Consultant ~~with access to~~ the following data and information for production of the fiscal impact statements by the Consultant for the benefit of the Arkansas General Assembly:

(a)(i) ~~Deidentified~~ Summary data ~~that illustrates~~ of historical utilization and cost information ~~specific to the type of claim or claims associated with a given bill~~, as maintained by EBD's medical and pharmacy vendors for the time frame of January 1, 2016 to December 1, 2022; or

~~(ii) If the vendors are unable to meet the request, access to a detailed claims database in order to allow Consultant to gather the information themselves; and~~

(b) ~~Deidentified~~ Census or summary enrollment data for the time frame of January 1, 2016 to December 1, 2022 ~~to be available from EBD to Consultant upon request for use in producing fiscal impact statements for the General Assembly.~~

3. BLR acknowledges that EBD is subject to the regulations of HIPAA and that EBD is required to comply with HIPAA's law and regulations.

4. EBD agrees to make appropriate uses and disclosures of protected health information ("PHI") pursuant to the MOU and any amendments for health care oversight activities or health care operations activities as set forth in the HIPAA standard.

5. EBD reserves the right to verify in writing with the BLR the status of any employee, agent, contractor, or other person who requests a use or disclosure of PHI from EBD in order to confirm its status as a health oversight agency.

6. BLR shall promptly notify EBD of any changes or amendments to the Agreement of which it becomes aware that could affect the nature of the health oversight agency status of the Legislative Council, the BLR, and its employees, agents, contractors, and persons to whom it has granted authority.

7. BLR agrees that all PHI disclosed to it shall not be used for any purpose other than for the purposes under the Agreement, or as required by law. ~~Neither BLR nor Consultant will disclose or disseminate or make available PHI to any third party, except to members of its Workforce as that term is defined by HIPAA or as required by law.~~

8. BLR, its contractors, and subcontractors shall, to the extent practicable, limit their request, use, or disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

9. BLR shall report any unauthorized use or disclosure of the data to EBD within two (2) business days of discovery of such unauthorized use or disclosure. In the event that EBD determines or has a reasonable belief that BLR has made or may have made a use or disclosure of the data that is not authorized by this MOU, or another written authorization from EBD, EBD may request BLR to perform one or more of the following:

(a) Promptly investigate and report to EBD BLR's determinations regarding any alleged or actual unauthorized use or disclosure;

(b) Promptly resolve any issues or problems identified in the investigation;

(c) Submit a formal response to an allegation or unauthorized use or disclosure; and

(d) Submit a corrective action plan with steps designed to prevent any future unauthorized uses or disclosures.

10. BLR agrees to employ data security measures to protect the PHI that it receives and request the same of its contractors and their subcontractors.

11. No copies of any PHI exchanged shall be made by BLR except as may be necessary to perform services relating to the Agreement or as required by law. Upon the written request of EBD at any time or upon the termination of the Agreement, BLR and ~~Segal-Consultant~~ shall either destroy or return to EBD all tapes, diskettes, or other media upon which EBD's PHI is stored, and all copies thereof, if any. If the data is destroyed rather than returned, BLR and Consultant shall certify in writing to be delivered to the EBD Director within five (5) business days following such destruction that such destruction has been completed.

12. BLR agrees to ensure that any recipients under the MOU who have access to information concerning employee health insurance applicants or beneficiaries are restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of EBD pursuant to its duties under HIPAA.

13. BLR agrees to provide EBD all fiscal impact analyses created by the Consultant and generated from the data produced under this document as soon as practicable, but no later than one (1) business day before the related bill or amendment is considered in its assigned Arkansas House of Representatives or Senate committee.

This constitutes the entire agreement between the Parties.

IN WITNESS WHEREOF, EBD and BLR have executed this Agreement this 16th day of December, 2022.

**DEPARTMENT OF TRANSFORMATION
AND SHARED SERVICES, DIVISION OF
EMPLOYEE BENEFITS:**

Jake Bleed, Director

Date

BUREAU OF LEGISLATIVE RESEARCH:

Marty Garrity, Director

Date _____

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