

**REPORT OF THE EXECUTIVE
SUBCOMMITTEE OF THE
ARKANSAS LEGISLATIVE COUNCIL**

December 16, 2022

Senator Terry Rice, Co-Chair
Senator Missy Irvin, Vice Co-Chair
Senator Cecile Bledsoe
Senator Jimmy Hickey, Jr

Representative Jeff Wardlaw, Co-Chair
Representative Jim Dotson, Vice Co-Chair
Representative Matthew J. Shepherd
Representative Kenneth B. Ferguson

December 15, 2022 Meeting

We, the Executive Subcommittee of the Arkansas Legislative Council, met Thursday, December 15, 2022, in Room B of the Big MAC Building, Little Rock, Arkansas. Co-Chair Terry Rice called the meeting to order and saw a quorum of members present.

Arkansas Department of Education, Division of Elementary and Secondary Education:

Co-Chair Rice recognized Ms. Courtney Salas-Ford, Chief Legal Counsel, ADE, and Mr. Jerry Keefer, Safe Schools Coordinator, ADE, to present the request for review and approval of the following emergency rule:

- **Arkansas Department of Education, Division of Elementary and Secondary Education:** Emergency Rules Governing School Safety (school safety grants, audits, drills, and school resource officers).

Co-Chair Rice recognized members for questions. After questions and discussion, Co-Chair Rice stated:

Without objection, the emergency rule for the Arkansas Department of Education, Division of Elementary and Secondary Education, is reviewed and approved and the review and approval shall be effective upon adjournment of the meeting of the Legislative Council on Friday, December 16, 2022.

Data Use Agreements

Co-Chair Rice recognized Ms. Jill Thayer, BLR Legal Counsel, to present the Data Use Agreements related to preparation of fiscal impact statements, by The Segal Group, Inc. for consideration. After the presentation, Co-Chair Rice recognized members for questions and after discussion, requested a motion.

Co-Chair Jeff Wardlaw moved that the following changes be made to the draft Memorandum of Understanding (MOU) between BLR and EBD presented to the Subcommittee: Section 1. Add the requirement that EBD provide the requested data to the Consultant upon its request within five (5) business days of receiving the request; Section 3. Remove all proposed markup and restore the original language regarding the data to be provided; Section 11. Make the correction indicated by markup, changing “Segal” to “Consultant”; and Section 13. Delete this section. In addition, require that the MOU be executed by EBD no later than 5:00 p.m., Friday, December 16, 2022. The motion was seconded and passed by voice vote.

Senator Missy Irvin moved to approve the Memorandums of Understanding (MOU) for institutions of higher education. The motion was seconded and passed by voice vote.

Director's Report

Co-Chair Rice recognized Ms. Marty Garrity, Director, Bureau of Legislative Research (BLR), to give members a report. Ms. Garrity reported that BLR and Mr. Eric Sanders, BLR's newest Information Technology Services Assistant Director, is addressing issues to provide better Wi-Fi service to members. The project will combine the Wi-Fi in multiple buildings, as one, to avoid a disconnection of service when members move from one building to another. With no questions, this concluded the director's report.

There being no further business before the subcommittee, the meeting was adjourned.

Respectfully submitted,

Senator Terry Rice and Representative Jeff Wardlaw, Executive Subcommittee Co-Chairs

TR/JW/MG:sla

Memorandum of Understanding
Between
The University of Arkansas Medical Benefit Plan and
Bureau of Legislative Research
for
Employee Health Benefits Data
December 16, 2022, to June 30, 2023
And As Extended

This Memorandum of Understanding (“MOU”) between the University of Arkansas Medical Benefit Plan (“Plan”) 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 a Consultant Services Agreement by and between the BLR and the Consultant dated _____, 2022 (the “Agreement”).

This MOU addresses the conditions under which Plan will disclose 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, 2023, the term of the Agreement. It may be extended upon written agreement of both Parties. The number of extensions is not limited.

WHEREAS, Plan is a self-funded health benefits plan administered by the Board of Trustees of the University of Arkansas, a state supported institution of higher education;

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 Plan and other institutions of higher education or their vendors;

WHEREAS, under the Privacy Rule adopted under the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”) Plan is a covered entity, and as 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; and

WHEREAS, information to be produced through Consultant’s Data Aggregation Services may benefit planning and administration for the Plan;

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

1. Plan 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. Upon receipt of a request for data within the scope of this MOU, Plan will, to the extent feasible, provide the requested data to the Consultant within five (5) business days of receiving the request.

2. Upon execution of a HIPAA compliant Business Associate Agreement between the Plan and Consultant, Plan will provide Consultant with access to data and information for the purpose of providing deidentified aggregate data to BLR to assist in production of fiscal impact statements by the Consultant for the benefit of the Arkansas General Assembly. As required by HIPAA, protected health information, as defined by HIPAA (“PHI”), will be provided by the Plan only to the extent required to accomplish the purposes set forth in this MOU, and PHI will not be provided to any entity or person other than Consultant. The following categories of data will be provided:

(a)(i) Summary data that illustrates historical utilization and cost information specific to claims maintained by the Plan’s medical and pharmacy vendors to the extent necessary to evaluate, pursuant to Act 112 of 2022, the effect of a bill filed with the General Assembly; 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) Census or summary enrollment upon Consultant’s request for use in producing fiscal impact statements for the General Assembly.

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

4. Plan reserves the right to verify in writing with Consultant the status of any employee, agent, contractor, or other person who requests use or disclosure of PHI from Plan in order to confirm its eligibility under HIPAA to receive or view PHI.

5. BLR shall promptly notify Plan of any changes or amendments to the Agreement that could affect the nature of the uses of PHI of the Plan's participants or the nature of the information to be provided by Consultant to BLR.

6. BLR shall cause Consultant to limit its 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.

7. BLR shall report any unauthorized use or disclosure of the data to Plan within two (2) business days of discovery of such unauthorized use or disclosure. In the event that Plan 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 Plan, Plan may request BLR to perform one or more of the following:

- (a) Promptly investigate and report to Plan 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.

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

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

10. 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 Plan and the various institutions of higher education pursuant to its duties under HIPAA.

11. Copies of summaries, reports and analyses provided by Consultant to BLR and that are derived from the data provided by Plan shall be provided by BLR to Plan.

This constitutes the entire agreement between the Parties.

IN WITNESS WHEREOF, Plan and BLR have executed this Agreement this ____ day of December 2022.

**THE UNIVERSITY OF ARKANSAS
MEDICAL BENEFIT PLAN, through
its administrator, the Board of Trustees of
the University of Arkansas,**

Donald R. Bobbitt, President

Date

BUREAU OF LEGISLATIVE RESEARCH:

Marty Garrity, Director

Date

**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 _____

DRAFT