



COOPERATIVE OF
AMERICAN PHYSICIANS

**Cooperative of American Physicians, Inc. and Mutual Protection Trust
PRIVACY POLICY STATEMENT**

The purpose of this Privacy Policy Statement (“Statement”) is to memorialize the policy of Cooperative of American Physicians, Inc., Mutual Protection Trust (“MPT”), and their respective departments, committees, subsidiaries and affiliates (collectively, “CAP”), to safeguard the privacy and security of personally identifiable protected health information disclosed to CAP by, or created or received by CAP on behalf of, the members of CAP (“Members”), in accordance with applicable laws. Depending upon the circumstances, CAP may or may not be acting in the capacity of a “Business Associate” with respect to the use or disclosure of Protected Health Information (“PHI”) received from a Member acting as a “Covered Entity”, as such capitalized terms are defined under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology For Economic and Clinical Health Act (the “HITECH Act”) (collectively, “HIPAA”). This Statement is intended to apply in the circumstance where HIPAA, in addition to other laws, also applies. For the avoidance of doubt, notwithstanding the foregoing, CAP’s adoption of this Statement should not be construed as an admission by CAP that it is acting in the capacity of a Business Associate with respect to such PHI or as a waiver of CAP’s right to object to such designation. Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in 45 C.F.R. Parts 160 and 164.

A. Permitted Uses and Disclosures of Protected Health Information.

Pursuant to the Mutual Protection Trust Agreement between MPT and its Members (the “Agreement”), CAP provides services (“Services”) for the operations of the Members that may involve the use and disclosure of PHI. These Services may include, among others, quality assessment, quality improvement, outcomes evaluation, protocol and clinical guidelines development, reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, conducting training programs to improve the skills of health care practitioners and providers, credentialing, conducting or arranging for medical review, arranging for legal services, directly providing legal services by Schmid & Voiles, a law department of MPT, conducting or arranging for audits to improve compliance, resolution of internal grievances, placing stop-loss and excess of loss insurance, and other functions necessary to perform these Services. Except as otherwise specified herein, CAP may make any uses and disclosures of PHI necessary to perform its obligations under the Agreement. All other uses or disclosures not authorized by the Agreement, or permitted or required by law, are prohibited. Moreover, CAP may disclose PHI for the purposes authorized by this Statement: (i) to its employees, subcontractors, and agents, in accordance with Section B.7 below; (ii) as directed by the Members; or (iii) as otherwise permitted by the terms of this Statement and the Agreement.

Additionally, unless otherwise limited herein, CAP is permitted to make the following uses and disclosures:

1. Business Activities of CAP. CAP may:

(a) Use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of CAP provided that such uses are permitted under state and federal confidentiality laws, and

(b) Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of CAP provided that (i) the disclosures are required by law; or (ii) CAP has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. §164.504(e)(4).

2. Additional Activities of CAP. In addition to using PHI to perform the Services set forth above, CAP may:

(a) Aggregate PHI in its possession with PHI of other Members that CAP has in its possession to said other Members provided that the purpose of such aggregation is to provide the Members with data analyses relating to the health care operations of the Members. Under no circumstances may CAP disclose PHI of one Member to another Member absent the explicit authorization of the Members concerned; and,

(b) De-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Member is sent the documentation required by 45 C.F.R. § 164.514(b), which shall be in the form of a written assurance from CAP. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute PHI and is not subject to the terms of this Statement.

B. Responsibilities of CAP. With regard to its use and/or disclosure of PHI, CAP hereby agrees to do the following:

1. Use and/or disclose PHI only as permitted or required by the Agreement or this Statement or as otherwise required by law.
2. Report to the designated Privacy Officer of the Member, in writing, any use and/or disclosure of the PHI that is not permitted or required by the Agreement or this Statement of which CAP becomes aware, within a reasonable time of CAP's discovery of such unauthorized use and/or disclosure. CAP will take prompt action to cure such deficiencies as reasonably requested by the Members, and any action pertaining to the unauthorized use and/or disclosure required by applicable federal and state laws and regulations.
3. Mitigate, to the extent practicable, any harmful effect that is known to CAP of an unauthorized use and/or disclosure of PHI by CAP.
4. Use reasonable and appropriate administrative, technical and physical safeguards that protect the confidentiality, integrity and availability of EPHI that CAP creates, receives, maintains or transmits on behalf of the Members.

5. Report any Security Incident involving unsecured PHI of which it becomes aware.
6. Following the discovery of a Breach of Unsecured PHI (as defined under the HITECH Act), cooperate with and assist the Covered Entity of such Breach in complying with the notification requirements under 45 CFR § 164.410 without unreasonable delay;
7. To the extent commercially practicable, require all of its subcontractors and agents that undertake to perform the Services that CAP performs under the Agreement and that receive or use, or have access to PHI under the Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that CAP has adopted pursuant to this Statement.
8. Unless prohibited by attorney-client and other applicable legal privileges or unless it would violate CAP's contractual and other legal obligations to the members, make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining the Members' compliance with the Privacy Regulations.
9. CAP shall honor any request from a Member for information to assist in responding to an individual's request for an accounting of disclosures of PHI by CAP. However, should a Member be asked for an accounting of the disclosures of an individual's PHI in accordance with 45 C.F.R. § 164.528, such accounting shall not include any disclosures by CAP to carry out the Members' health care operations or any other excepted disclosures described in 45 C.F.R. § 164.528.
10. Upon termination of this policy, the protections of this Statement will remain in force and CAP shall make no further uses and disclosures of PHI except for the proper management and administration of its business or as required by law.
11. In those rare instances when the Members would be required to honor an individual's request for access and/or amendment of PHI disclosed to CAP, CAP will assist the Members to comply with its duties under 45 C.F.R. §§ 164.524 and 164.526. However, usually the Members will not be required to honor such requests because PHI in CAP's possession is not part of a Designated Record Set as that term is defined by 45 C.F.R. § 164.501; and/or because the information is exempt from access and amendment under 45 C.F.R. §§ 164.524(a) and 164.526(a)(2); and/or because access would violate superseding contractual and other legal rights of the Members; and/or because any amendment could be tampering with evidence in a civil or administrative matter.

C. Obligations of Member/Covered Entity.

1. Each Member/Covered Entity agrees to timely notify CAP, in writing, of any arrangements between the Covered Entity and the Individual that is the subject of PHI that may impact in any manner the Use and/or Disclosure of that PHI by CAP under this Statement.
2. Each Member/Covered Entity shall not request CAP to use or disclose PHI in any manner that would not be permissible under HIPAA if done directly by Covered Entity.

3. Member/Covered Entity represents that, to the extent Covered Entity provides PHI to CAP, such PHI is the minimum necessary PHI for the accomplishment of CAP's purpose.
4. Member/Covered Entity represents that, to the extent it provides PHI to CAP, Covered Entity has obtained the consents, authorizations and/or other forms of legal permission required under HIPAA and other applicable law
5. Implement reasonable and appropriate measures to ensure that PHI and electronic PHI are disclosed, provided or transmitted to CAP only in a secure manner including through the use of a technology or methodology specified by the Secretary in the guidance issued pursuant to the HITECH Act, or if such guidance is not issued within the time specified in the HITECH Act, by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.