

University Health Care, Inc.
dba Passport Health Plan

Subject:	Open Records Policy	Number:	
Approved By: Title:	David Henley, Chief Compliance Officer	Page:	1 of 5
Signature:	Signature on file	Effective Date: (of last revision)	
Prepared By:	Misti A. Jones Compliance Coordinator	Original Date:	April 23, 2011
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POLICY

This Open Records Policy (Policy) provides guidance to University Health Care, Inc. (hereinafter, Passport Health Plan or PHP) staff concerning the duties and process for responding to requests for records under Kentucky’s Open Records Act (hereinafter, the Act). The intent of the Policy is to provide public access to PHP’s records subject only to the restrictions imposed by law.

PURPOSE/SCOPE

The Policy was developed in consideration of, and is consistent with, the requirements of the Act. The Act, codified at KRS § 61.870 to KRS § 61.884, defines relevant terms; describes the duties for making public records accessible to the public; provides exceptions under which records may not be accessible to the public; and requires entities subject to the Act to develop policies to assure compliance with the Act.

Passport Health Plan’s compliance with the Act is based upon its current determination that it may be a “public agency” as that term is defined at KRS § 61.870 (1) (h). Public agency status under KRS § 61.870 (1) (h) is based upon a determination that PHP may derive “25% of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds.” The exact meaning of this definition has not been well defined by Kentucky law. Notwithstanding, PHP has determined to comply with the Act with the presumption that it may be a public agency pursuant to KRS § 61.870 (1) (h). Because PHP’s share of “state or local authority funds” is ever changing, PHP

shall determine periodically whether the 25% threshold established by the Act remains applicable to PHP. PHP reserves the right to challenge its status as a public agency according to KRS § 61.870 (1).

DEFINITIONS

N/A

PROCEDURE

Passport Health Plan Process for Responding to Open Records Requests

- A. An open records request shall be in writing, signed by the person requesting the records, and directed to PHP's Records Custodian at the address shown at the end of this Policy. The request should state specifically the records being requested.
- B. PHP will receive open records requests only by hand-delivery, mail or via facsimile.
- C. Any PHP employee who receives an open records request must immediately forward that request to the Custodian of Records.
- D. Open records requests shall be date stamped with the date upon which the request was received by PHP.
- E. Three Day Response. PHP shall make a good faith effort to make available responsive, non-exempt records within three (3) days of a request.
 - a. If responsive, non-exempt records are in active use, in storage or otherwise unavailable, PHP shall:
 - i. Respond in writing to a request no later than three (3) days from the date PHP received the request;
 - ii. Provide a detailed explanation as to why the requested records cannot be produced within three (3) days; and
 - iii. Identify a date certain by which the responsive, non-exempt records may be available.
 - b. If PHP is unable to identify responsive records because the request is ambiguous, overly broad or because records do not exist, PHP shall respond in writing by explaining why the request cannot be processed.
 - c. Any written response to an open records request must advise the person requesting records that if the person disagrees with PHP's response to the request that the person may seek review by the Office of Attorney General pursuant to KRS § 61.880.
- F. Public Records Defined
 - a. KRS § 61.870 (2) defines "public records" as "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or

- b. "Public records" do not include any records owned or maintained by or for an entity that is a "public agency" pursuant to KRS § 61.870 (1) (h) that are not related to functions or operations funded by state or local authority.
 - c. With respect to the Act, PHP's records that do not relate to its functions or operations that are funded, in whole or in part, by state funds are not "public records" by definition at KRS § 61.870 (2). For example, PHP's Medicare Advantage operations do not involve state or local authority funds and, therefore, PHP's records pertaining to Medicare Advantage are not "public records" subject to disclosure under the Act.
 - d. PHP shall not create a record simply to respond to an open records request if no record exists in response to a request.
 - e. The Act applies only to requests for records – not information.
- G. Exempt Records. PHP may withhold from disclosure such records that are responsive to an open records request, but exempt from disclosure based upon a specific statutory exemption within the Act.
- a. If PHP withholds records based upon an exemption, PHP shall respond to an open records request by:
 - i. Identifying the specific exemption serving as the basis for withholding records; and
 - ii. Provide a brief explanation as to why the exemption applies to the responsive record or information.
 - b. KRS § 61.878 (1) (a) through (n) identifies fourteen (14) separate categories of records that are exempt from production pursuant to the Act. Any of the fourteen (14) exemptions may apply to responsive documents depending upon the circumstances of the request. Although the Records Custodian should consider the applicability of all of the fourteen (14) exemptions, the following exemptions (paraphrased from the Act) may be more common exemptions as applicable to PHP's records:
 - i. Records containing information of a personal nature where the disclosure would be a clearly unwarranted invasion of personal privacy, [KRS § 61.878 (1) (a)];
 - ii. Records generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records, [KRS § 61.878 (1) (c) (1)];
 - iii. Records which constitute preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of a final action of a public agency, [KRS § 61.878 (1) (i)];

- iv. Records which constitute preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended, [KRS § 61.878 (1) (i)];
 - v. Records containing information which is prohibited from disclosure by federal law or regulation, [KRS § 61.878 (1) (k)]; and
 - vi. Records containing information which is prohibited or restricted from disclosure, or otherwise made confidential, by Kentucky statutes, [KRS § 61.878 (1) (L)].
- H. Production of Records. Depending upon the circumstances of the specific request, PHP may either copy and mail responsive, non-exempt records or provide an opportunity for such records to be inspected by the person making the request.
- a. Mailing Copies
 - i. If the person requesting records resides outside Jefferson County, then PHP shall produce copies of responsive records by mail.
 - ii. If the person requesting records resides within Jefferson County, PHP may elect to produce copies of responsive, non-exempt records by mail.
 - iii. PHP shall require pre-payment of all copying and mailing fees prior to mailing the responsive, non-exempt records. PHP's copying fees shall not exceed \$0.25 per page copied.
 - iv. Once responsive, non-exempt records are prepared for mailing, PHP shall notify the person requesting the records by letter that the responsive, non-exempt records will be mailed upon PHP's receipt of the copying and mailing fees.
 - b. Inspection
 - i. If a person requesting records resides within Jefferson County, then PHP may elect to produce copies of responsive, non-exempt records for inspection.
 - ii. If a person requesting records requests an opportunity to inspect documents – as opposed to receiving copies via mail, PHP may elect to produce responsive, non-exempt records.
 - iii. As referenced in Paragraph (a) (i), PHP shall not require inspection of responsive, non-exempt records for a person who resides outside Jefferson County. See KRS § 61.872 (3) (b).
 - iv. PHP shall provide a person inspecting responsive, non-exempt records with suitable accommodations to conduct the inspection. PHP shall make copies of such records upon the request of a person inspecting responsive, non-exempt records provided that the person pre-pays the copying fees.
 - v. PHP shall advise all persons inspecting responsive, non-exempt records that state law prohibits them from removing

- vi. Inspection must be pre-scheduled with PHP and may be conducted only between the hours of 10:00 am and 5:00 pm (ET).
- c. Redaction. In the event a responsive record contains information that would otherwise be exempt from disclosure, guidance from the Kentucky Attorney General states that responsive records may be subject to redaction if the responsive records contain both non-exempt and exempt information.
 - i. PHP's use of redaction to prevent the disclosure of exempt information shall be limited to only the specific information for which an exemption applies.
 - ii. PHP must inform the person requesting records, in writing, as to the specific exemptions claimed for the information that is redacted from a responsive record.

Contact Information

Request for access to open records should be addressed to:

Passport Health Plan
c/o Custodian of Records, VP & Chief Compliance Officer
305 West Broadway
Louisville, KY 40202
Phone: (502) 585-8239
Fax: (502) 585-8338
Hours: 9:00 am – 5:00 pm

CROSS REFERENCE/REFERENCE MATERIALS
(If necessary to cite other policies or documents)

Open Records Act
KRS § 61.870 to KRS § 61.884

Review/Revision Dates (Annually at minimum)

End of Policy