

Stop Loss Insurance and HIPAA Privacy

HM Insurance Group's position is that HIPAA Privacy laws do not apply to Stop Loss carriers.

The U.S. Department of Health and Human Services (HHS) has clarified that a Stop Loss insurer does not meet the statutory definition of a "Health Plan," and, therefore, cannot itself be a "Covered Entity" under HIPAA Privacy requirements.¹

The Office of Civil Rights further clarified that a Business Associate Agreement (BAA) is not required when a group health plan purchases reinsurance from an insurer.² In other words, a reinsurer or Stop Loss carrier does not become a Business Associate of a Health Plan simply by selling reinsurance or a Stop Loss policy to a Health Plan and paying claims under such reinsurance or Stop Loss policy.³ While Group Health Plans are "Covered Entities" under HIPAA, employers are not. Stop Loss policies are issued to employers, not group health plans. Because the employer is not a "Covered Entity," its Stop Loss insurer is not a "business associate" and a BAA is neither applicable nor required.

HM recognizes the importance of protecting the information it receives for underwriting Stop Loss policies and their related claim payments. To clarify these protections, a Stop Loss Confidentiality Agreement (SLCA) can be executed between the group health plan, third party administrator and HM, as necessary. While not a BAA, the SLCA recognizes the need for privacy protections of the data used by or disclosed to HM as the Stop Loss carrier.

As an insurer in good standing, additional protection is afforded by the controls required by MAR (Model Audit Rule), state and federal regulations, financial audits, procedural audits and NAIC requirements.

HM also has implemented privacy and security practices that evidence our commitment to protecting the confidential and personal information entrusted to us by our customers.

These include the following:

- Extensive data security "defense in depth" measures are monitored continuously and amended as needed, including, but not limited to, access control lists, industry leading firewalls, demilitarized zones, network zoning, network intrusion detection system, proxies, web content filters, email content filters, virus scanning, deny by default (whitelists) and ongoing vulnerability assessments.
- Secure data transmission between parties is an essential part of the security review.
- Network access permissions are granted only for the minimum necessary access, by role, for each employee's job functions.
- Business Continuity and Disaster Recovery Plans are mandatory and tested annually to ensure in case of disaster that back-up data can be retrieved within 24 hours.
- All employees complete privacy, security and compliance training upon hire and annually thereafter. Background checks are mandatory for all employees.
- The Privacy and Security departments develop, implement, and enforce privacy and information policies and procedures guided by controls regulated by HIPAA, the HITECH Act, both state and federal regulations and contractual requirements. Each department also conducts annual policy reviews, risk assessments and physical walk-throughs to assess internal risks to any electronic, paper or other records and ensure all systems are safe from intentional introduction of a breach into HM data networks.
- Use of Off-Shore resources is generally prohibited unless an exception is granted by the Chief Information Security Officer and the Chief Privacy Officer after thorough investigation. Data cannot be stored outside of the United States.

For more information, visit hmig.com



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¹ <https://aspe.hhs.gov/report/standards-privacy-individually-identifiable-health-information-final-privacy-rule-preamble/health-plan-0>

² <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/>

³ <https://www.hhs.gov/hipaa/for-professionals/faq/255/is-reinsurer-business-associate-of-health-plan/index.html>

Coverage is underwritten by HM Life Insurance Company, Pittsburgh, PA, in all states except New York under policy form series HL601 or HMP-SL (11/16) or similar. In New York, coverage is underwritten by HM Life Insurance Company of New York, New York, NY, under policy form series HL601 or HMP-SL (11/16) or similar. In Pennsylvania, coverage may be underwritten by Highmark Casualty Insurance Company under policy form series HC601 or HMP-SL (11/16) or similar. The coverage requested may not be available in all states and is subject to individual state approval.