

Managed Care Reinsurance and HIPAA Privacy

HM Insurance Group's (HM) position is that HIPAA Privacy laws do not apply to its reinsurance and provider excess loss insurance products.

The U.S. Department of Health and Human Services (HHS) has clarified that a reinsurer 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 carrier does not become a Business Associate of a Health Plan simply by selling reinsurance or excess loss insurance to a Health Plan or provider or by paying claims under such policies.³ While Health Plans and providers are Covered Entities under HIPAA, each entity is acting on its own behalf when the Covered Entity purchases a reinsurance or a provider excess loss policy from HM, and when claims are submitted and paid under these policies. Because HM is not providing a service to aid the purchaser in its role as a Covered Entity, HM 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 its reinsurance and provider excess loss policies and their related claim payments.

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>

In all states except New York, coverage is underwritten or reinsured by HM Life Insurance Company or Highmark Casualty Insurance Company, Pittsburgh, PA, under policy form series HM PEL 1105, HC PEL 1105 or HM 1005-ELR or similar. In New York, coverage is underwritten or reinsured by HM Life Insurance Company of New York, New York, NY, under policy form series HMNY PEL 1105, HMNY 1005 ELR or similar. RBS may provide certain administrative and customer support services. RBS Re, South Miami, FL, may provide certain administrative and customer support services. The coverage or service requested may not be available in all states and is subject to individual state approval.