

# **The International Union of Operating Engineers Local 825 Welfare Fund Notice of Privacy Practices**

**Effective as of September 23, 2013**

## **Section 1: Purpose of This Notice**

**THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.**

### **This Notice Is Required By Law.**

During the course of providing you with health coverage, the International Union of Operating Engineers Local 825 Welfare Fund (“Fund”) will have access to health information about you that has been deemed to be protected (referred to in this Notice as “Protected Health Information” or “PHI”) pursuant to the privacy rules issued under the Health Insurance Portability and Accountability Act of 1996 (commonly known as “HIPAA”), as amended by the Health Information Technology For Economic and Clinical Health Act (“HITECH”). As a result, the Fund is required by law to take reasonable steps to ensure the privacy of your personally identifiable health information and to inform you about:

- How the Fund uses and discloses your PHI,
- Your privacy rights with respect to your PHI;
- The Fund’s duties with respect to your PHI;
- Your right to file a complaint with the Fund and with the Secretary of the United States Department of Health and Human Services, and
- The person or office to contact for further information about the Fund’s privacy practices.

Accordingly, this Notice has been drafted pursuant to the HIPAA Privacy Rule, contained in the Code of Federal Regulations at 45 C.F.R. Parts 160 and 164. Terms not defined in this Notice have the same meaning as they have in the HIPAA Privacy Rule, as amended by HITECH.

The Fund reserves the right to change the terms of this Notice and to make new provisions regarding your PHI that it maintains, as permitted or required by law. If the Fund makes a material change to this Notice, it will provide you with a copy of the revised Notice of Privacy Practices.

## **Section 2: Your Protected Health Information**

### **Protected Health Information (PHI) Defined.**

The term “Protected Health Information” (PHI) includes all health information, including demographic information, collected from you or created or received by the Fund, a health care provider, a health care clearinghouse, a health plan, or your employer, from which it is possible to individually identify you and that relates to your (i) past, present or future physical or mental health or condition, (ii) the provision of health care to you, or (iii) the past, present, or future payment for the provision of health care to you. Individually identifiable information includes your name, address, date of birth, employee ID number, and Social Security number that is linked to the above-referenced matters concerning your health care, regardless of whether such information is transmitted orally, in writing, electronically or in any other form.

### **How the Fund May Use and Disclose Your Protected Health Information.**

Generally speaking, the Fund Sponsor has amended its plan documents to protect your PHI as required by federal law. Under the law, however, the Fund may disclose your PHI without your consent in the following cases:

- Upon your request, the Fund is required to give you access to certain PHI in order to inspect and copy it.
- As required by an agency of the government. The Secretary of the United States Department of Health and Human Services (HHS) may require the disclosure of your PHI to investigate or determine the Fund’s compliance with privacy regulations.

In addition, under the law, the Fund may also use or disclose your PHI under other certain circumstances without your permission. The following categories (as well as those described in “*Other Permitted Uses and Disclosures of Your PHI for Which Consent, Authorization or Opportunity to Object is Not Required*”) describe the different ways that the Fund may use or disclose your PHI without your consent. For each category of uses or disclosures, this Notice will explain the scope of the unauthorized disclosure and provide some examples. Please note that not every use or disclosure in a category will be listed. Nevertheless, all of the ways that the Fund will be permitted to use or disclose PHI will fall into one of these categories.

### **For Treatment, Payment and Health Care Operations.**

*Treatment.* Although the Fund does not provide treatment, it may use or disclose your PHI to support the provision, coordination or management of your health care treatment. For this compliance purpose, “treatment” also includes, but is not limited to, consultations and referrals between one or more providers. For example, in the process of arranging for durable medical equipment services ordered by your attending physician with a contracted service provider, the Fund may disclose your name, address, telephone number and diagnosis to the service provider’s intake coordinator.

Payment. The Fund may use or disclose your PHI with regard to its payment activities. “Payment” includes, but is not limited to, actions to make eligibility determinations, coverage determinations and payment (including resolving payment disputes, responding to payment inquiries, subrogating or obtaining reimbursement, conducting medical necessity and appropriateness of care claim reviews, utilization review and precertification). For example, the Fund may advise a physician’s office whether you are eligible for coverage and the benefit amount payable by the Fund. Also, explanation of benefit statements are mailed to the address the Fund has on record for a participant.

Health Care Operations. The Fund may use or disclose your PHI as part of its general administrative or business functions in order for it to function as a health plan. These functions include, but are not limited to, quality assessment and improvement, reviewing competence or qualifications of health care professionals, case management, disease management, activities relating to the creation and renewal of insurance and benefit administration contracts, legal services, auditing services, and general administrative activities, including data and information systems management. For example, the Fund may use information from your claims to refer you to case management, determine benefit costs, or for auditing the accuracy of claims processing functions.

**Disclosure To Third Parties.** The Fund may contract with individuals and entities known as Business Associates to perform various functions on its behalf or to provide certain types of services. In order to perform these functions or to provide these services, Business Associates will receive, create, maintain, transmit, use and/or disclosure your PHI, but only after they agree in writing with the Fund to implement appropriate safeguards regarding your PHI. For example, the Fund may contract with a service provider to perform the administrative functions necessary to pay your medical claims.

**Reminders.** The Fund may use your PHI to provide you with reminders. For example, the Fund may use your child’s date of birth to remind you that you may purchase COBRA continuation coverage for your child who would otherwise lose coverage under the Fund due to age, or to remind you to make an appointment with your physician.

**Treatment Alternatives.** The Fund may use your PHI to inform you about treatment alternatives.

**Health-Related Benefits and Services.** The Fund may use or disclose your PHI to inform you about other health-related benefits and services that may be of interest to you.

**Disclosure to the Plan Sponsor.** The Fund may disclose your PHI to its Board of Trustees (“Board” or “Trustees”), which serves as the Plan Sponsor for the Fund, (or its designated committee) for purposes related to the Fund’s payment and health care operations, including in connection with appeals that you file following a denial of a benefit claim. In addition, the Fund Office may receive your PHI if you request assistance in filing or perfecting your claim for benefits under the Fund. The Trustees may also receive your PHI if necessary for them to fulfill their fiduciary duties with respect to the Fund. When disclosing PHI to the Board, the Fund will make reasonable efforts not to disclose more than the minimum necessary amount of PHI to achieve the particular purpose of the disclosure. Unless authorized by you in writing, your PHI: (1) may not be disclosed by the Fund other than as

permitted in this Notice or as required by law, or (2) will not be used with respect to any employment-related actions or decisions, or (3) with respect to any other benefit plan sponsored by or maintained by the Board.

In addition, the Fund may disclose “summary PHI” to the Board for obtaining premium bids or modifying, amending or terminating the Fund. Summary PHI summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor (such as the Board of Trustees) has provided health benefits under a group health plan. Identifying information will be deleted from summary PHI, in accordance with federal privacy rules.

### **When the Disclosure of Your PHI Requires Your Written Authorization.**

The Fund must generally obtain your written authorization before (each of these includes defined exceptions under which the Fund may use or disclose your PHI for these purposes without your authorization):

- Using or disclosing psychotherapy notes about you from your psychotherapist.

Psychotherapy notes are separately filed notes about your conversations with your mental health professional during a counseling session. They do not include summary information about your mental health treatment. The Fund is not likely to have access to or maintain these types of notes.

- Using or disclosing your PHI for marketing purposes (a communication that encourages you to purchase or use a product or service) if the Fund receives direct or indirect financial remuneration (payment) from the entity whose product or service is being marketed.
- Receiving direct or indirect remuneration (payment or other benefit) in exchange for receipt of your PHI.
- Using and disclosing your PHI for any use or disclosure not described within this Notice. At any time, you may revoke your authorization in writing except where the Fund has taken action in reliance on your authorization.

### **Other Uses and Disclosures for Which Consent, Authorization or Opportunity to Object are Not Required.**

In addition to the above, the following categories describe other possible ways that the Fund may use and disclosure your PHI without your specific consent, authorization or request. For each category of uses or disclosures, this Notice will explain the scope of the unauthorized disclosure and provide some examples. Please note that not every use or disclosure in a category will be listed. Nevertheless, all of the ways that the Fund will be permitted to use or disclose PHI will fall into one of these categories.

- (1) When required by law.

- (2) When permitted for purposes of public health activities. This includes reporting product defects, permitting product recalls and conducting post-marketing surveillance. PHI may also be used or disclosed if you have been exposed to a communicable disease or are at risk of spreading a disease or condition, if authorized by law.
- (3) When authorized by law to report information about abuse, neglect or domestic violence to public authorities if there exists a reasonable belief that you may be a victim of abuse, neglect or domestic violence. In such case, the Fund will promptly inform you that such a disclosure has been or will be made unless that notice would cause a risk of serious harm. For the purpose of reporting child abuse or neglect, it is not necessary to inform the minor that such a disclosure has been or will be made. Disclosure may generally be made to the minor's parents or other representatives although there may be circumstances under law when the parents or other representatives may not be given access to the minor's PHI.
- (4) The Fund may disclose your PHI to a public health oversight agency for oversight activities authorized by law. This includes uses or disclosures in civil, administrative or criminal investigations and audits; inspections; licensure or disciplinary actions (for example, to investigate complaints against providers); and other activities necessary for appropriate oversight of government benefit programs (for example, to investigate Medicare or Medicaid fraud); or for the government to monitor the health care system, government programs and compliance with civil rights laws.
- (5) The Fund may disclose your PHI when required for judicial or administrative proceedings. For example, your PHI may be disclosed in response to a subpoena or discovery request or other lawful process by someone involved in such legal dispute, provided certain conditions are met. One of those conditions is that satisfactory assurances must be given to the Fund that the requesting party has made a good faith attempt to provide written notice to you, and the notice provided sufficient information about the proceeding to permit you to raise an objection and no objections were raised or were resolved in favor of disclosure by the court or tribunal.
- (6) When required for law enforcement health purposes, including the reporting of certain types of wounds. Also when required for law enforcement emergency purposes if the law enforcement official represents that the information is not intended to be used against the individual, the immediate law enforcement activity would be materially and adversely affected by waiting to obtain the individual's agreement and the Fund in its best judgment determines that disclosure is in the best interest of the individual. Law enforcement emergency purposes include identifying or locating a suspect, fugitive, material witness or missing person, and disclosing information about an individual who is or is suspected to be a victim of a crime, but only if the individual agrees to the disclosure or the covered entity is unable to obtain the individual's agreement because of emergency circumstances.

- (7) When required to be given to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death or other duties as authorized by law. Also, disclosure is permitted to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent.
- (8) The Fund may use or disclose PHI for research, subject to certain conditions and limitations.
- (9) When consistent with applicable law and standards of ethical conduct if the Fund, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person reasonably able to prevent or lessen the threat, including the target of the threat.
- (10) When authorized by and to the extent necessary to comply with workers' compensation or other similar programs established by law.
- (11) The Fund is permitted to disclose your PHI to researchers when their research has been approved by an institutional review board or privacy board that has established protocols to ensure the privacy of your PHI, or the research involves a limited data set which includes no unique identifiers (information such as name, address, social security number, etc., that can identify you).
- (12) When the appropriate conditions apply, the Fund may use or disclose PHI of individuals who are Armed Forces personnel: (1) for activities deemed necessary by military command authorities; or (2) to a foreign military authority if you are a member of that foreign military service. The Fund may also disclose your PHI to authorized federal officials conducting national security and intelligence activities.
- (13) If you are an inmate of a correctional institution or under the custody of a law enforcement official, the Fund may disclose your PHI to the institution or official if the PHI is necessary for the institution to provide you with health care; to protect the health and safety of you or others; or for the security of the correctional institution.
- (14) If you are an organ donor, the Fund may release your PHI after your death to organizations that handle organ procurement or organ, eye, or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.

Any other Fund uses and disclosures not described in Section 2 of this Notice will be made only if you provide the Fund with written authorization, subject to your right to revoke your authorization. If you provide us with written authorization to use or disclose your PHI for purposes other than those set forth in this Notice, you may revoke that authorization in writing at any time. If you revoke your authorization, the Fund will no longer use or disclose your PHI for the reasons covered by your written authorization. However, the

Fund is unable to take back any disclosures that the Fund has already made with your authorization, and the Fund is required to retain records of the care provided to you.

### **Disclosures to Others Involved in Your Health Care.**

Disclosure of your PHI to family members, other relatives and your close personal friends without your written consent or authorization is allowed if the information is directly relevant to the family or friend's involvement with your care or payment for that care and you have either agreed to the disclosure or have been given an opportunity to object and have not objected.

If you are not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of your incapacity or emergency circumstance, the Fund may nevertheless make a disclosure of your PHI to family members, other relatives and your close personal friends if the Fund concludes, based on professional judgment and its experience with common practice, that the disclosure is in your best interest.

You can ensure that no disclosures will be made by the Fund under this section to your family members, other relatives and close personal friends by filing a written restriction with the Fund as described below.

## **Section 3: Your Individual Privacy Rights**

### **Breach Notification.**

If a breach of your unsecured PHI occurs, the Fund will notify you.

### **Uses and Disclosures Requiring Your Written Authorization.**

Other uses and disclosures of your PHI that are not described above will be made only with your written authorization, subject to your right to revoke such authorization. Your authorization must be in writing and contain certain elements to be considered a valid authorization. You may call or write the Fund Office to request an authorization form be sent to you.

### **Personal Representatives.**

You may exercise your rights through a personal representative. An individual purporting to act as your personal representative will be required to produce evidence of authority to act on your behalf before being provided access to your PHI or being allowed to take any action for you. Proof of such authority may take one of the following forms:

- A power of attorney for health care purposes, notarized by a Notary public;
- A court order of appointment of the person as conservator or guardian;
- An Appointment of Personal Representative form that is completed and signed by you; or
- An individual who is the parent of a minor child.

Notwithstanding the foregoing, the Fund retains the right to deny access to your PHI to a personal representative in certain abuse, neglect or endangerment situations where the Fund concludes it is in your best interest to deny access. This also applies to personal representatives of minors.

### **Rights of Individuals.**

#### *Right to Request Restrictions on PHI Uses and Disclosures.*

You may request, in writing, that the Fund restrict the uses and disclosures of your PHI to carry out treatment, payment or health care operations or to restrict uses and disclosures to family members, relatives, friends or other persons identified by you who are involved in your care or payment for your care. However, the Fund is not required to agree to a requested restriction. If the Fund does agree to the request, the Fund will not use or disclose your PHI in violation of that restriction unless it is needed to provide emergency treatment or the Fund terminates the restriction with or without your agreement. Your request must include the PHI you wish to limit, whether you want to limit the Fund's use, disclosure, or both, and (if applicable), to whom you want the limitations to apply (for example, disclosures to your spouse). You have the right to request that the Fund not disclose PHI to a health plan for "payment or health care operations," as defined by HIPAA, if the provider has already been paid in full by the individual for the health care services.

The Fund will accommodate reasonable written requests for communications of PHI by alternative means or at alternative locations (e.g., send your Explanation of Benefits to your office, instead of at home). You or your personal representative will be required to complete the Fund's model form to request restrictions on uses and disclosures of your PHI.

Make such requests to:

Privacy Official  
International Union of Operating Engineers Local 825 Welfare Fund  
65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800

#### *Right to Inspect and Copy PHI.*

You have the right to inspect and obtain a copy of your PHI (in hardcopy or electronic form) that is contained in a "designated record set" – medical records and other records maintained and used in making enrollment, payment, claims adjudication, case management and other decisions about you – for as long as the Fund maintains the PHI. You may request your hardcopy or electronic information in a format that is convenient for you, and the Fund will honor that request to the extent possible. You also may request a summary of your PHI. Requests for access to your PHI must be made in writing. Requested information will be provided within 30 days of receipt of your request. A single 30-day extension is allowed if the Fund provides you with a written statement of the reasons for the delay and the expected date by which the Fund will provide the information.

You or your personal representative will be required to complete a form to request access to the PHI in your designated record set.

You may be charged a reasonable, cost-based fee for copying the PHI, or preparing a summary of your PHI. The Fund will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred. Requests for access to PHI should be made to the following officer:

Privacy Official  
International Union of Operating Engineers Local 825 Welfare Fund  
65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800

If access is denied, you or your personal representative will be provided with a written denial explaining the basis for the denial. Such notice will advise you that you may request in writing to have the denial reviewed by a licensed health care professional designated by the Fund to act as a reviewing official and who did not participate in the original decision to deny. Such denial will also describe how you may complain to the Fund or the Secretary of the Department of Health and Human Services pursuant to the complaint procedures described herein.

*Right to Amend PHI.*

You have the right to submit a written request to amend your PHI contained in a “designated record set” for as long as the Fund maintains the PHI. The Fund will act on the request within 60 days of receipt. The Fund is allowed a single 30-day extension if the Fund is unable to comply with the 60-day deadline.

The Fund, however, may deny your request for an amendment if it is not in writing or does not include a valid reason to support the request. In addition, the Fund may deny your request if you ask the Fund to amend information that did not originate with the Fund; is not contained in the records maintained by the Fund; is not part of the information that you would legally be permitted to inspect and copy; or is accurate and complete.

If your request is denied in whole or in part, you or your personal representative will be provided with a written denial explaining the basis for the denial. You or your personal representative may then submit a written statement disagreeing with the denial and have that statement included with any future disclosures of your PHI.

Your request to amend your PHI must be made in writing to the following officer.

Privacy Official  
Operating Engineers Local 825  
65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800

You or your personal representative will be required to complete the Fund's model form to request amendment of your PHI.

*Right to Receive an Accounting of PHI Disclosures.*

The Fund will also provide you with an accounting of disclosures by the Fund of your PHI during the six (6) years prior to the date of your written request. However, such accounting need not include PHI disclosures made: (1) to carry out treatment, payment or health care operations; (2) to individuals about their own PHI; (3) prior to the compliance date; (4) based on your written authorization; (5) to friends or family in your presence or because of an emergency; (6) for national security purposes; and (7) incidental to otherwise permissible disclosures. Any request for an accounting must be submitted in writing. An accounting will be provided within 60 days of receipt of your request. Your first request for an accounting in a 12-month period will be responded to without charge. You may be charged a reasonable, cost-based fee for each additional request for an accounting within such 12-month period. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

*Submission of Requests.*

The Fund has 60 days to provide the accounting. The Fund is allowed an additional 30 days if the Fund gives you a written statement of the reasons for the delay and the date by which the accounting will be provided. The requests described above should be submitted in writing to the Fund Office at the address at the end of this Notice.

*Right to Receive Paper Copy of This Notice Upon Request.*

You have the right to receive a paper copy of this Notice, contact the following officer:

Privacy Official  
Operating Engineers Local 825  
65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800

This right applies even if you have agreed to receive the Notice electronically.

## **Section 4: The Fund's Duties**

### **Maintaining Your Privacy.**

The Fund is required by law to maintain the privacy of your PHI and to provide you and your eligible dependents with notice of its legal duties and privacy practices. In addition, the Fund may not (and does not) use your genetic information that is PHI for underwriting purposes.

This Notice is effective beginning on September 23, 2013 and the Fund is required to comply with the terms of this Notice as of such date. However, the Fund reserves the right to change its privacy practices and to apply changes to any PHI received or maintained by the Fund

prior to that date. If a privacy practice is changed, a revised version of this Notice will be provided to you and to all past and present participants and beneficiaries for whom the Fund still maintains PHI.

If material changes are made to this Notice, it will be posted on the Fund's website promptly by the effective date of the material change; and thereafter the Fund will send a hard copy of the revised notice in its next annual mailing. If the Fund does not post a revised notice on its website, it must provide such notice within 60 days of the effective date of the material revision to this Notice.

Material changes are changes to:

- The uses or disclosures of PHI,
- Your individual rights,
- The duties of the Fund, or
- Other privacy practices stated in this Notice.

### **Minimum Necessary Standard.**

When using or disclosing PHI or when requesting PHI from another covered entity, the Fund will make reasonable efforts to limit the use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure or request, taking into consideration practical and technological limitations.

However, the minimum necessary standard will not apply in the following situations:

- Disclosures to or requests by a health care provider for treatment;
- Uses or disclosures made to you or pursuant to an authorization initiated by you;
- Disclosures made to the Secretary of the U.S. Department of Health and Human Services;
- Uses or disclosures that are required by law; and
- Uses or disclosures required for the Fund's compliance with the HIPAA privacy regulations.

### **De-Identified Information.**

This Notice does not apply to information that has been de-identified. De-identified information is information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

## **Section 5: Your Right to File a Complaint with the Fund or the HHS Secretary**

### **Questions/Complaints.**

If you believe that your privacy rights have been violated or have any questions regarding this Notice or the subjects addressed in it, you may file a complaint with or submit your questions to the following officer:

Privacy Official  
International Union of Operating Engineers Local 825 Welfare Fund  
65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800

You may also file a complaint with the Secretary of the U.S. Department of Health and Human Services. Filing instructions are available at:

<http://www.hhs.gov/ocr/privacy/hipaa/complaints/index.html>

All complaints must be submitted in writing.

The Fund will not penalize or retaliate against you for filing a complaint.

## **Section 6: If You Need More Information**

To file a complaint with or submit questions to the Fund Office, you may contact the Fund Office as follows:

*Privacy Officer  
International Union of Operating Engineers Local 825 Welfare Fund  
65 Springfield Avenue  
Second Floor  
Springfield, NJ 07081  
Phone (973) 671-6800*