

**County Of San Diego
Health and Human Services Agency (HHSa)**

**Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: Privacy, Complaints**

SUBJECT: Complaint Process for Privacy Issues

NO: HHSa-L-18

PAGE: 1 of 6

DATE: July 27, 2007

REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process for handling complaints related to privacy issues from individuals (patients/residents/clients) or their legal representatives.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Individually Identifiable Health Information: Information that is created or received by the County, that identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of physical or mental health care to an individual

This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Legal Representative: An individual's legal representative may include the following:

- Conservator of the Person – Court appointed;
- Attorney-in-Fact for Health Care – Holder of a valid Durable Power of Attorney for Health Care;
- Guardian of the Person – Court appointed;
- Parent – Unemancipated minor where the minor does not have the authority to authorize the release of records on his or her own behalf;
- Decedent's Personal Representative – Court appointed;

**County Of San Diego
Health and Human Services Agency (HHS)**

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: Complaint Process for Privacy Issues

NO: HHS- L-18

PAGE: 2 of 6

DATE: July 27, 2007

- Executor of a Decedent's Estate – Court appointed;
- Administrator of a Decedent's Estate – Court appointed;
- Personal Representative – Court appointed; or
- Beneficiary of a Decedent's Estate – Must provide adequate documentation that the person is a beneficiary of the decedent's estate and that no other person has the authority to prevent the release of the protected health information (PHI).

Note: This policy uses the term "legal representative." That term is meant to be synonymous with the Privacy Rule term "personal representative." This policy uses the term "legal representative" because the term "personal representative" has a separate and distinct legal meaning under California law.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained electronically or by any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

POLICY: In compliance with state and federal laws and regulations, the County will provide a process for individuals (patients, residents, or clients) or their legal representatives to make complaints concerning the County's privacy policies and procedures. Any workforce member who receives a privacy-related complaint from an individual is responsible for promptly forwarding the complaint to the County of San Diego Compliance Office.

The County of San Diego Compliance Office will receive privacy-related complaints and provide information about matters covered in the County's Notice of Privacy Practices and related policies and procedures.

The County of San Diego Compliance Office will document all complaints received and the disposition of each complaint.

**County Of San Diego
Health and Human Services Agency (HHSa)**

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: Complaint Process for Privacy Issues

NO: HHSa- L-18

PAGE: 3 of 6

DATE: July 27, 2007

PROCEDURES:

Who can make a complaint?

Individuals whose PHI the County maintains or other persons may file complaints about suspected violations of the policies and procedures of the County's covered components regarding:

- Disagreements with the covered component's privacy policies and procedures;
- Suspected violations in the use or disclosure of PHI;
- Denials of access to PHI;
- Denials of amendments to PHI; and
- Retaliatory or intimidating actions.

Members of the workforce or business associates may report a suspected violation of the Privacy Rule by a member of the workforce. They may also file their complaint with the Secretary of the U.S. Department of Health and Human Services.

Note: Covered components of the County and their business associates will not be considered to have violated the privacy requirements when a complainant discloses PHI provided that:

- The workforce member or business associate believes in good faith that the County has engaged in unlawful conduct or the conditions endanger patients, workers or the public;
- The workforce member or business associate discloses the PHI to a health oversight agency or an attorney retained on behalf of the workforce member; or
- A workforce member is the victim of a criminal act and discloses PHI to a law enforcement officer about the perpetrator.

Types of Complaints

Individuals may file complaints concerning

- Disagreements with the County's privacy policies and procedures;
- Suspected violations in the use or disclosure their PHI;
- Denials of access to their PHI;
- Denial of amendments to their PHI; or
- Retaliatory or intimidating actions.

**County Of San Diego
Health and Human Services Agency (HHSa)**

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: Complaint Process for Privacy Issues

NO: HHSa- L-18

PAGE: 4 of 6

DATE: July 27, 2007

From employees concerning:

- Misuse of PHI or process problems involving employees within the County.

The County of San Diego, Privacy Officer will have the authority to:

- Investigate privacy-related complaints throughout the County;
- Access to employee records and individual client records as needed;
- Make recommended business process changes or negotiate other resolutions with all sections or divisions of the County to resolve complaints; and
- Mitigate or suggest actions to mitigate harmful effects resulting from violations of the Privacy Rule.

There are limited types of complaints that the Privacy Rule requires be handled by the County's covered component. These include:

- The County/employee has inappropriately used PHI;
- The County/employee has inappropriately disclosed PHI;
- The County/employee has inappropriately disposed of PHI;
- The County/employee has denied access to PHI;
- The County/employee has denied an amendment to PHI; and
- The County's privacy policies and practices violate HIPAA requirements.

Timing

An individual filing a complaint has 180 days from the date he or she becomes aware of the suspected violation to file a complaint with the Secretary of the U.S. Department of Health and Human Services. Individuals who wish to file a privacy-related complaint with the County are encouraged to do so as soon as they become aware of a suspected violation to facilitate investigation of the complaint and corrective action.

Retaliatory Actions

The County will not take retaliatory actions against individuals and others who file a complaint; testify, assist or participate in an investigation, compliance review or other hearing; or oppose any act or practice that they believe is unlawful under the privacy regulations.

**County Of San Diego
Health and Human Services Agency (HHSa)**

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

SUBJECT: Complaint Process for Privacy Issues

NO: HHSa- L-18

PAGE: 5 of 6

DATE: July 27, 2007

Informing the Individual

In collaboration with the Privacy Officer, the covered components of the County will inform the individual within 30 calendar days of filing the complaint about the results of the investigation, and what changes have been made to prevent further violations of the HIPAA privacy requirements.

Sanctions

The County will take appropriate actions against members of its workforce who fail to comply with the privacy policies and procedures of the covered components. The County will document the sanctions that are applied.

County employees in the classified service will be subject to sanctions, including possible termination, in accordance with Rule VII - Discipline of the County of San Diego Civil Service Rules, for violation of any County policy and procedure concerning patient privacy or any related state or federal law or regulation.

County employees who are not in the classified service will be subject to sanctions, including possible termination, for violation of any County policy and procedure concerning patient privacy or any related state or federal law or regulation.

Mitigation

During the investigation of a violation, the Privacy Officer will document any resulting harmful effects that are identified.

The Privacy Officer, in consultation with legal counsel, will take steps, as reasonably practicable, to mitigate the harmful effects of the violation. These steps may include, but are not limited to:

- Suspending any further use or disclosure of PHI that may be in violation of the County's privacy-related policies or of state and federal privacy laws and regulations;
- Sanctions against workforce members in accordance with the County's disciplinary policies; and
- Termination of business associate arrangements.

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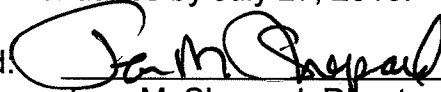
PAGE: 6 of 6

DATE: July 27, 2007

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego

SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved: _____



Jean M. Shepard, Director
Health and Human Services Agency