



**DEPARTMENT OF MENTAL HEALTH
POLICY/PROCEDURE**

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HIPAA PRIVACY COMPLAINTS	504.01	08/01/2004	1 of 9
APPROVED BY:  Director	SUPERSEDES 500.11 08/01/2004	ORIGINAL ISSUE DATE 04/14/2003	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 The purpose of this policy is to ensure that privacy complaints regarding the use or disclosure of Protected Health Information (PHI) are addressed and resolved effectively and promptly in accordance with the HIPAA Privacy Rule.

POLICY

- 2.1 It is the Department of Mental Health's (DMH) policy to protect the privacy of PHI in compliance with applicable law, as well as DMH's policies and business practices. All complaints related to privacy will be investigated and resolved, either internally or through the County's Chief Privacy Officer. It is DMH's policy to communicate, in accordance with this Policy, with individuals who report privacy-related complaints, to help ensure that such individuals understand DMH's privacy-related complaint process and are periodically informed as to the status of the complaint through the investigation and resolution process. It is DMH's goal that complaints will be internally resolved and closed within thirty (30) business days of the opening of the investigation by the assigned Patients' Rights Advocate (PRA) investigating the complaint. Complaints that have not been resolved internally will be promptly forwarded to the Chief Privacy Officer for resolution.
- 2.2 The objectives of the HIPAA Privacy Complaint Policy are to:
 - 2.2.1 Respond to the complainant's (or the complainant's personal representative's) concerns regarding use or disclosure of PHI in a timely, effective, sensitive and confidential manner.
 - 2.2.2 Provide a process to resolve the complaints regarding privacy of PHI in accordance with the HIPAA Privacy Rule.



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- 2.2.3 Provide a mechanism for monitoring, tracking, and evaluating HIPAA privacy complaints.
- 2.3 Any person, regardless of whether DMH maintains their PHI, may file complaints regarding suspected violations of the HIPAA Privacy Rule by DMH. Complaints may be filed against members of the DMH workforce and members of DMH’s Business Associates’ workforce.
- 2.4 Members of the DMH workforce or Business Associates may file a complaint regarding a suspected violation of the HIPAA Privacy Rule by another member of the DMH workforce. (See Paragraph 15 – Disclosures by Whistleblowers.)
- 2.5 Anonymous complaints will be permitted; however, insufficient detail may delay, hinder, or prevent a full investigation.
- 2.6 The HIPAA Privacy Complaint Form (Attachment I) shall be made available to anyone who requests it.
- 2.7 The complainant may exercise the right to have a representative intervene on his/her behalf and/or assist during the complaint processes.
- 2.8 When deemed appropriate, the PRA shall encourage the complainant or his/her representative to discuss the complaint at the service provider level. The PRA, however, shall inform the complainant or his/her representative regarding the option of having the assigned PRA assist in the complaint determination.
- 2.9 HIPAA Privacy Complaints must include completed Sections I through III of the HIPAA Privacy Complaint Form.
- 2.10 The complainant may file a complaint with the Office of Civil Rights, U.S. Department of Health and Human Services at any time before, during, or after initiating the complaint process.
- 2.11 The complainant shall not be prevented from accessing the complaint process solely on the grounds of having filed the complaint form incorrectly. In circumstances in which the complaint form is incomplete, the assigned PRA shall contact the complainant and assist in completing the HIPAA Privacy Complaint Form.



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- 2.12 At any time during the complaint process, if a delay in response is experienced due to unexpected circumstances, the complainant shall be made aware of the nature of the delay. Reasons for the delay shall be documented on the HIPAA Privacy Complaint Status Log. (Attachment II)
- 2.13 Individuals may file complaints concerning:
- 2.13.1 Disagreement with DMH's privacy policies and procedures;
 - 2.13.2 Suspected violations in the use, disclosure, or disposal of their PHI;
 - 2.13.3 Denials of access to their PHI;
 - 2.13.4 Denial of amendments to their PHI; or
 - 2.13.5 Retaliatory or intimidating actions.
- 2.14 DMH will refer complaints, which it is not responsible to handle, to the proper individual or entity. Complaints against DMH that do not fall within the categories described in Section 2.13 above will be handled in accordance with DMH's Beneficiary Problem Resolution Process.
- 2.15 Disclosures by Whistleblowers. DMH would not be considered to have violated privacy requirements if a member of its workforce or a business associate discloses PHI, provided that:
- 2.15.1 The workforce member or business associate believes in good faith that DMH has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by DMH potentially endangers one or more patients, workers, or the public; and
 - 2.15.2 The disclosure is to:
 - 2.15.2.1 a health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of DMH or to an appropriate health care accreditation organization for the purpose of reporting the



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allegation of failure to meet professional standards or misconduct by DMH; or

2.15.2.2 an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described this section.

2.16 DMH may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against its workforce, including whistleblowers and clients, for filing complaints.

PROCEDURES

- 3.1 All privacy complaints must follow the following Complaint procedures:
 - 3.1.1 The complainant, with or without the assistance of the PRA, completes and submits the HIPAA Privacy Complaint Form to the Patients’ Rights Office.
 - 3.1.2 If the HIPAA Privacy Complaint Form is incomplete or completed incorrectly, the PRA shall notify the individual filing the complaint and assist in the completion of the complaint.
 - 3.1.3 Upon receipt of a completed HIPAA Privacy Complaint Form, the Patients’ Rights Office’s designated support staff shall log the information into the HIPAA Privacy Complaint Status Log. (Attachment II)
- 3.2 After the complaint is logged into the HIPAA Privacy Complaint Status Log, the designated support staff shall give a copy of the complaint to the HIPAA Privacy Program Supervisor for review and assignment.
- 3.3 The HIPAA Privacy Program Supervisor shall assign the complaint to a HIPAA trained PRA within three (3) business days.
- 3.4 Upon receipt of the HIPAA Privacy Complaint Form, the PRA shall contact the complainant by telephone, or in writing if no phone number is available.



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- 3.5 The PRA shall assess the nature of the complaint, identify individuals named in the complaint, and identify with the complainant possible courses of action to resolve the problem.
- 3.6 The PRA shall contact the Program Head of the facility, and/or other entities named in the complaint and inform them of receipt of the complaint, the nature of the complaint, and the HIPAA Privacy Complaint process.
- 3.7 If the Program Head of the facility is specifically named by the complainant as a subject of the complaint, or if there is any concern for a potential conflict of interest, the PRA or another objective representative designated by the PRA will lead the complaint resolution process.
- 3.8 All notes generated by the PRA during the complaint resolution process, including the PRA’s investigation strategy, activities, and attempts to resolve the complaint, shall be recorded on the HIPAA Complaint Tracking Form. (Attachment III)
- 3.9 The PRA shall create a file with the complainant’s name that shall contain the HIPAA Privacy Complaint along with the PRA’s HIPAA’s Complaint Tracking Form and any relevant documentation submitted to the Patients’ Rights Office.
- 3.10 The assigned PRA, in consultation with the DMH HIPAA Privacy Program Supervisor, shall attempt to investigate and resolve the complaint within thirty (30) business days of receipt of the complaint.
- 3.11 The PRA will inform the complainant within five (5) business days, by letter or phone call, that their complaint has been received.
 - 3.11.1 If the complaint meets one of the categories of a valid HIPAA Privacy Complaint (refer to 2.13.1 thru 2.13.5), the notification shall state that an investigation has been initiated and that the complainant will be contacted by the individual investigating the complaint within fifteen (15) business days.
 - 3.11.2 If the complaint does not meet one of the categories of a valid HIPAA Privacy Complaint, the complainant will be informed that their complaint falls outside the scope of HIPAA Privacy and the complaint will be



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processed through DMH's Complaint & Grievance process, or referred to the proper entity, as appropriate.

- 3.12 The Patients' Rights Office will consult with the DMH HIPAA Privacy Officer, as needed.
- 3.13 The PRA shall provide to the complainant and the DMH facility named in the complaint written notice of the determination via first class mail. The PRA shall determine whether a separate letter to the facility is indicated.
- 3.14 Copies of the determination letter will be sent to the immediate supervisor, the individual(s) named in the complaint (if applicable), the Program Head, District Chief, DMH HIPAA Privacy Officer, and the County's Chief Privacy Officer as indicated.
- 3.15 In the event that the PRA determines a violation has occurred which has resulted in a harmful effect to the individual, the PRA, in conjunction with the DMH Privacy Officer, shall take steps to mitigate such harmful effect pursuant to the DMH Policy on Mitigation.
- 3.16 If the complainant does not agree with the findings and actions presented in the determination letter, the PRA will escalate the complaint to the Chief Privacy Officer for second-level review. The PRA shall consult with the HIPAA Program Supervisor and/or the Patients' Rights Director prior to forwarding the HIPAA Privacy complaint to the Chief Privacy Officer for second-level review.
- 3.17 The PRA will also contact the complainant to inform him or her of the escalation.
- 3.18 If the Chief Privacy Officer requests a complainant's file for review, the PRA shall record the request on the log and forward the materials to the Chief Privacy Officer. The Chief Privacy Officer shall return complaint files, including all documentation, to the Patients' Rights Office upon closure of a complaint.
- 3.19 The Chief Privacy Officer will conduct any additional investigation deemed necessary or appropriate, in his discretion, and will also consult with County Counsel as needed.



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- 3.20 The Chief Privacy Officer shall coordinate with the PRA in the final resolution of the complaint and will ensure that the PRA is notified of all correspondence.
- 3.21 DMH shall submit a quarterly report, that excludes any PHI, to the Chief Privacy Officer that summarizes:
 - 3.21.1 Number of HIPAA Complaints Received;
 - 3.21.2 Number of Valid Complaints;
 - 3.21.3 Number of Invalid Complaints;
 - 3.21.4 Average Resolution Time (Business Days); and
 - 3.21.5 Identification of any trends.

ADMINISTRATIVE REVIEW OF ADVERSE DETERMINATIONS

- 4.1 In the event that the Patients' Rights Office determines that DMH's HIPAA policies and procedures have been violated, appropriate administrative review and action shall be initiated.
- 4.2 It shall be the responsibility of the immediate supervisor of the person(s) who have violated HIPAA procedures to take appropriate administrative action in accordance with all applicable personnel policies and procedures.
- 4.3 The immediate supervisor shall consult with the Program Head of the facility and District Chief as appropriate. The immediate supervisor will also consult with the DMH HIPAA Privacy Unit and DMH management staff in the process of determining the proper administrative action.
- 4.4 The immediate supervisor shall provide a written report to DMH HIPAA Privacy Unit regarding the action taken.

DOCUMENTATION RETENTION

- 5.1 The DMH HIPAA Privacy Unit shall be the custodian for DMH records related to personnel resolutions concerning HIPAA violations.



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- 5.2 The Patients’ Rights Office shall be the custodian for DMH records related to investigations of HIPAA complaints.
- 5.3 All documents created or completed under this policy and procedure will be retained for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

DEFINITIONS

- 6.1 **“Workforce”** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work, is under the direct control of DMH, whether or not they are paid by the County.
- 6.2 **“Whistleblower Disclosure”** means a disclosure of PHI by a workforce member or business associate that meets the following requirements:
 - 6.2.1 A workforce member or business associate believes in good faith that DMH engaged in unlawful conduct or otherwise violated professional or clinical standards; and
 - 6.2.2 The disclosure is to an agency responsible for overseeing health care programs, or to a public health authority, or to a health care accreditation organization, or to an attorney.
- 6.3 **“Patients’ Rights Advocate” (PRA)** means an advocacy professional with a mental health, legal, and/or clinical background. The PRA is responsible for investigation of HIPAA Privacy complaints and complaint determinations. The PRA shall also represent mental health clients in the complaint process, as indicated. The PRA shall provide information and education regarding mental health laws and patients’ rights to mental health clients, DMH staff, client organizations, providers, community and government programs, the advocacy community, and family groups.
- 6.4 **“HIPAA Privacy Complaint Status Log”** is a computerized database that serves as a tracking and monitoring tool. (See Attachment II)



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6.5 “**HIPAA Complaint Tracking Form**” is a form used by DMH to record investigation strategy, documents gathered and reviewed, summary of findings, proposed resolution and other notes related to the resolution process. See Attachment III.

AUTHORITY

HIPAA Privacy Rule, 45 CFR, Section 164.530(d).

ATTACHMENTS

Attachment I HIPAA Privacy Complaint Form
Attachment II HIPAA Privacy Complaint Status Log
Attachment III HIPAA Complaint Tracking Form