



DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT: WHISTLEBLOWERS	POLICY NO. 500.24	EFFECTIVE DATE April 14, 2003	PAGE 1 of 3
APPROVED BY: <i>Ang Saitl</i> Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL (S) 1

PURPOSE

- 1.1 To outline the Department of Mental Health (DMH) policy on disclosures of Protected Health Information (PHI) by workforce members (and in certain cases, its business associates) under the circumstances where such workforce member or business associate makes the disclosure as a whistleblower (“Whistleblower Disclosure”) or the workforce member discloses PHI as the victim of a crime.

POLICY

- 2.1 DMH’s workforce members and business associates may make Whistleblower Disclosures in accordance with the requirements of this policy and workforce members may make disclosures as crime victims in accordance with the requirements of this policy.

DEFINITIONS

- 3.1 **“Authorization”** means the signed Authorization used by DMH to obtain an individual’s permission prior to using or disclosing that individual’s PHI for purposes that do not fall within the definitions of treatment, payment or health care operations activities.
- 3.2 **“Business Associate”** means a person or entity that is not a member of DMH’s workforce and who, on behalf of DMH, performs or assists in the performance of:
 - 3.2.1 A function or activity involving the use or disclosure of PHI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or
 - 3.2.2 Any other function or activity regulated by HIPAA; or
 - 3.2.3 Provides legal, actuarial, accounting, consulting, data aggregation (as defined in HIPAA), management, administrative, accreditation or financial services to or for DMH.
- 3.3 **“Protected Health Information”** (“PHI”) means information that (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; (ii) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (iii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual).



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- 3.4 **“Whistleblower Disclosure”** shall mean a disclosure of PHI by a workforce member or business associate of DMH that meets the following requirements:
- 3.4.1 The workforce member or business associate believes in good faith that DMH engaged in unlawful conduct or otherwise violated professional or clinical standards, or that the care provided by DMH may potentially endanger patients, other workforce members or the public; and
 - 3.4.2 The disclosure is to an agency responsible for overseeing health care programs, or to a public health authority or to health care accreditation organization or to an attorney.
- 3.5 **“Workforce”** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for DMH, is under the direct control of such entity, whether or not they are paid by DMH.

PROCEDURE

- 4.1 Whistleblower Disclosures
- 4.1.1 Members of the DMH workforce and business associates of DMH are permitted to make Whistleblower Disclosures without Authorization.
 - 4.1.2 Members of the DMH workforce will not be subject to sanctions by DMH for making Whistleblower Disclosures.
 - 4.1.3 DMH will not take any intimidating or retaliatory acts against members of the DMH workforce and DMH business associates who make Whistleblower Disclosures related to DMH’s handling of PHI and compliance with HIPAA.
 - 4.1.4 DMH shall not be considered to have violated HIPAA if a member of its workforce or its business associate makes a Whistleblower Disclosure in compliance with the requirements of this policy.
- 4.2 Crime Victim Disclosure
- 4.2.1 Members of the DMH workforce are permitted to make disclosures of PHI to a law enforcement official if the workforce member is the victim of a crime and the PHI to be disclosed is about the suspect who allegedly committed the crime against the workforce member.
 - 4.2.2 Under this policy, the workforce member may only disclose the following PHI to law enforcement:
 - 4.2.2.1 Name and address of the suspect;
 - 4.2.2.2 Date and place of birth;



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- 4.2.2.3 Social Security Number;
- 4.2.2.4 A B O blood type and Rh factor;
- 4.2.2.5 Type of injury suspect has;
- 4.2.2.6 Date and time of treatment;
- 4.2.2.7 Date and time of death, if applicable; and
- 4.2.2.8 A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars and tattoos.

4.2.3 Workforce members making disclosures of PHI that meet the requirements of this Section 2.0 will not be subject to discipline.

4.2.4 DMH shall not be considered to have violated HIPAA if a workforce member who is the victim of a crime discloses PHI to law enforcement in compliance with the requirements of this policy.

4.3 Disclosures Not in Compliance with This Policy

4.3.1 If a workforce member reasonably believes that another workforce member or business associate, as applicable, has made a Whistleblower Disclosure or a disclosure as a crime victim that does not comply with the requirements of this policy, such workforce member shall contact the designated Privacy Officer and make a report of such suspected non-compliance.

4.3.2 The designated Privacy Officer, with advice from outside legal counsel and notification to the Chief Information Privacy Officer, shall investigate all such reports and take steps necessary to mitigate the harmful effects of any violations of this policy or other of DMH's privacy-related policies.

DOCUMENT RETENTION

5.1 All documents required to be 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.

AUTHORITY

HIPAA, 45 CFR. Section 164.502 (j)